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# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT—PART II

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Magnuson Fishery Conservation and M... E

SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE

COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

REAUTHORIZATION AND AMENDMENT OF THE MAGNU-  
SON ACT FOR THE BENEFIT OF THE ENTIRE UNITED  
STATES FISHING INDUSTRY

SEPTEMBER 29, 1993

Serial No. 103-61

Printed for the use of the Committee on Merchant Marine and Fisheries



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## MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT—PART II

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WEDNESDAY, SEPTEMBER 29, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:30 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Hughes, Unsoeld, Taylor, Lancaster, Hamburg, Cantwell, Hutto, Coble, Kingston, and Torkildsen.

Staff Present: Sue Waldron, Jim Mathews, Greg Lambert, Lori Rosa, Jean Flemma, Bill Wright, Frank Lockhart, Chris Mann, Cyndi Wilkinson, Rod Moore, Julie Roberts, Ed Lee, Margherita Woods, John Rayfield, and Dave Whaley.

Mr. MANTON. Good afternoon, everybody.

The Subcommittee on Fisheries Management will come to order, and we will get started with our hearing for this afternoon.

I would ask the following witnesses to come forward and take their place at the witness table: Mr. Arni Thomson, Mr. Zeke Grader, Mr. Pliny E. McCovey, Mr. Eldon Greenberg, and Ms. Linda Johnson.

At the outset, we will just go over the ground rules briefly. You will notice there is a little box with three bulbs in front of you. Each witness will be expected to limit their testimony to about five minutes. You will get a green light to start, and a little warning light, and then the red light will come on when the time is expired. We will try not to cut you off in mid-word or mid-sentence, obviously.

So with those ground rules, we will get started. The first witness in the order that you have been called is Mr. Arni Thomson, Executive Director Alaska Crab Coalition.

### STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

Mr. THOMSON. Good afternoon, Mr. Chairman, Members of the House Merchant Marine and Fisheries Committee. It is a pleasure to be here today to testify before you.

My name is Arni Thomson. I am Executive Director of the Alaska Crab Coalition. This is a trade association representing ap-



proximately 65 crab fishing vessels that operate principally in Federal waters off the coast of Alaska and the Bering Sea.

The main objective of the ACC is to promote and improve conservation and safety in our fisheries. To that end, the ACC has been a key industry participant in the legislative and regulatory processes, including the 1990 and 1993 reauthorizations of the Magnuson Act.

The ACC has also played a significant role in the development and implementation of new international standards for responsible fishing with the goal of achieving sustainable utilization of living marine resources.

The Committee is well aware of the major challenges to the safe conduct and effective conservation of our fisheries resources.

My prepared statement describes in detail the loss of human life and excessive waste of target and nontarget species. My prepared statement also sets forth some specific proposals to address these and other problems. I would like to focus my oral testimony on those proposals.

First, the ACC, along with other major industry organizations based in Washington State, recommends that the act be amended to include a new national standard requiring that fisheries management measures promote the safety of life and property at sea.

I would like to reference a recent article in May of 1993 in Fortune magazine which tells the story on the Bering Sea crab fisheries which are considered to be the most dangerous of the fisheries in Alaska and possibly the U.S.

Second, the ACC, again joined by other major fishing industry organizations, recommends amendment of the act to bring it into closer conformity with the objectives and standards established by the international community at the UNCED conference, that is the United Nations Conference on Environment and Development, and the 1992 Conference on Responsible Fishing.

This means amending the act to provide expressly for the minimization of waste, including the bycatch of nontarget species and the discard of target species. It also means the avoidance and the reduction of excess fishing capacity.

On the latter point, it is now universally recognized as reflected in recent studies undertaken by the United Nations Food and Agricultural Organization that overcapitalization is a major contributor to conservation problems in the fisheries of the world.

This Committee should be conscious of the fact that overcapitalization in the fisheries off the coast of Alaska poses a severe challenge to the sustainability of target and nontarget resources alike.

My third and final request in terms of an amendment to the Magnuson Act is a request to clarify that conservation is the first priority of fisheries management in all the fisheries management plans.

In closing, I would like to focus on two more points, and they are closely interrelated. The ACC recognizes that there is considerable interest in establishing Federal fishing fees. My organization can accept new fees but only if they are set at economically sensible levels. That means that other fees, taxes, and costs must be taken into account. In the region which we fish off the coast of Alaska, the State of Alaska already charges substantial fees and taxes; and the operational costs of fishing there are quite high.



In addition, the State is pressing for extension of fishing quotas for coastal communities. That reduces the available resources for those who have historically operated in the fisheries and must attempt to survive in an already heavily overcapitalized economic environment.

In short, there are limits to what the crab fleet can sustain. New fees and new quotas for coastal communities cannot be considered in isolation from one another nor in isolation from other taxes, fees, and costs borne by our fishermen.

In addition, it may well be that the elimination of excess capacity in the existing fleet will be indispensable to further development of coastal community-based fisheries operations. Otherwise neither the historical participants nor the new entrants can hope to benefit, and they will all be likely to suffer.

Our industry and our Nation deserve better than a system that is reduced simply to allocating poverty.

That concludes my remarks, Mr. Chairman.

Mr. MANTON. Thank you, Mr. Thomson.

[The statement of Mr. Thomson can be found at the end of the hearing.]

#### STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. At this juncture, without objection, I would like to enter my own opening statement in the record and the statements of Mr. Fields, the ranking member of the Full Committee, and the statement of Mr. Young, the ranking member of this Subcommittee.

[The statements of Mr. Manton, Mr. Young, and Mr. Fields follow:]

#### STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Good morning, and welcome to our continuing series of hearings on the reauthorization of the Magnuson Fishery Conservation and Management Act.

The authorization for the Magnuson Act expires at midnight tomorrow. Fortunately, funds will continue to be available to carry on the valuable research, conservation, management, and other activities conducted under the Act. However, this deadline reminds us of the tremendous work still ahead. The Subcommittee has conducted a total of six hearings on Magnuson, including field hearings in Alaska, Oregon and New York. These hearings have generated hundreds of pages of testimony. Even during hearings on seemingly unrelated issues, Magnuson concerns somehow intrude. When we held a joint hearing on fishing vessel safety, the Subcommittee heard how plans, promulgated under Magnuson, encourage fishing derbies, which threaten safety. Similarly, hearings on the Chehalis River spotlighted the relationship between habitat protection and Magnuson conservation goals. Finally, when we examined the use of oil rigs as fishing reefs, the Subcommittee was asked to balance the interests of recreational and commercial fishermen, a task normally undertaken by the Councils established under the Magnuson Act.

I anticipate there will be a couple more hearings this year on the reauthorization of the Magnuson Act, but we are clearly at the stage when members will have to begin considering the tough choices that need to be made to strengthen the Act.

We will be asked to develop amendments that ensure both the conservation of a valuable resource and the fair allocation of the sea's harvest among the various users. These were the initial goals of the Magnuson Act; the task before us will be to fine tune the Act so that the Councils can better accomplish these goals.

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND  
RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. Chairman, I am pleased that we are continuing our review of the Magnuson Fishery Conservation and Management Act. Today we will hear from a wide range of witnesses who should provide important perspectives for our consideration during the reauthorization of the statute.

Since the enactment of the Magnuson Act in 1976, our fisheries have undergone substantial changes which we must evaluate. The statute has achieved certain goals envisioned almost 20 years ago. U.S. fishermen are finally in control of the fish in U.S. waters, leading to a noteworthy place for the United States in world markets. We also have a greater scientific understanding of certain marine resources and are better able to manage them. So far, so good. However, some fisheries have shown dramatic declines due in part to both natural variation and overfishing.

We must consider both the apparent successes and failures of the Act to see how to improve it. Yet even minor adjustments could result in unwanted changes. We must be careful; as the saying goes, "If it ain't broke, don't fix it." We must therefore make only deliberate corrections—if and only if they are needed.

But we must establish goals for the future of our fisheries. Insights for fishery management may provide for smoother sailing in the years to come. Better management methods will someday mean more fish for all. It is possible that the existing provisions will be sufficient, but minor changes may prove beneficial. It is during this reauthorization that we must choose the most appropriate means to proceed.

Mr. Chairman, I look forward to continuing our efforts on this important issue for our Subcommittee.

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND  
RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, this hearing marks the seventh time that the Subcommittee on Fisheries Management has received testimony on the reauthorization of the Magnuson Fishery Conservation and Management Act. I applaud you for holding such an extensive series of deliberations, including field hearings, on this issue and your legislation, H.R. 780, to extend this landmark fisheries law.

This reauthorization will regulate the fisheries of the United States for the next 4 or 5 years, and it is important that we have an extensive record of testimony on this subject before we move forward to mark up any reauthorization bill.

I am hopeful that during today's hearing our distinguished witnesses will address the key concerns of Council memberships, the interaction of State and Federal governments, and so-called alternative fisheries management plans. I am sure this testimony will be most beneficial to us. I'll again, I compliment you, Mr. Chairman, for scheduling this hearing and I look forward to working with you in the days ahead as we craft sound legislation to reauthorize the Magnuson Act.

Thank you, Mr. Chairman.

Mr. MANTON. I would also like to ask any of the other Members if they have opening statements that they would like to deliver.

Mr. Hamburg?

STATEMENT OF HON. DAN HAMBURG, A U.S. REPRESENTATIVE  
FROM CALIFORNIA

Mr. HAMBURG. Thank you, Mr. Chairman, and good afternoon. Thank you for convening this hearing on the Magnuson Act.

For 10,000 years, humans have depended on salmon for not only food but also spiritual sustenance. Salmon have been at the mercy of human impacts on the environment. For most of that 10,000 years, the relationship between humans and salmons flourished. But in 1993, I think we can all say that that relationship lies in ruins.

In just the last 100 years, salmon populations have come to the brink of extinction in the Pacific Northwest; and the imminent listing of coho salmon throughout its range in the lower 48 States is

only the latest in a long and sad parade of stock declines and extinctions.

In northern California alone, the continued existence of 35 different stocks of Chinook and coho salmon is currently imperiled. Less than 5000 coho salmon spawn in California streams today; 50 years ago, there were 200,000. Almost a million spring run Chinook return annually to the Sacramento-San Joaquin and Klamath-Trinity systems just a hundred years ago. Now only a few hundred spawn in their ancestral streams.

Right now the plight of the Pacific salmon and the needs of the people depending on it is the primary fishing issue in my district. In the last four years, personal income from commercial salmon fisheries in the north coast in my district in Crescent City to Eureka to Fort Bragg has dropped to almost nothing. The Klamath-Trinity basin tribes—the Hoopa, the Yurok, and the Karuk—barely eke out a subsistence harvest.

Radical declines of salmon stocks have led to increasingly severe Federal restrictions on the fishery and to rivalry among the people and the communities that are dependent upon them. Harvest allocation decisions have become more and more controversial. Emergency rules issued earlier this year to allow for a greater tribal harvest and spawning escapement in the Klamath are now the subject of litigation between commercial fishermen's groups and the United States Government. The Interior Department has promised a final opinion on the tribal entitlement to Klamath River Chinook salmon by tomorrow.

For many years, the Magnuson Act has been the centerpiece of Federal fisheries management. The present condition of the salmon resource and salmon-dependent communities is clear testimony to the failure of that process. It is time to fix what is not working in the Magnuson Act. It is also time to go beyond the act to an integrated Federal fisheries policy.

For salmon an integrated policy must include the following: implementation of the Magnuson Act consistent with State and tribal rights, promotion of a Federal strategy for sustainable land and water use practices, commitment to Federal initiatives for watershed protection and restoration, development of a consistent Federal policy on fish hatcheries, and the conscientious implementation of other laws such as the Clean Water Act and the Endangered Species Act.

It is time to rebuild a shattered relationship between mankind and the salmon. It is time to manage all of our living marine resources.

I wish to extend a warm welcome today to representatives from my Congressional District, the First District of California, two people who have been intimately involved in the issues in the Klamath-Trinity River fishery and the salmon fishery throughout California and the Pacific coast: First, Mr. Zeke Grader, who is the Executive Director of the Pacific Coast Federation of Fishermen's Association, which is a federation of 26 local community-based fishermen's organizations; and, second, Mr. Pliny McCovey, Senior Vice Chairman of the Hoopa Valley Tribal Council, a comanaging fishery agency in the Klamath-Trinity Basin.



Thank you both very much. And I very much look forward to your testimony and hearing what you can do to help us improve this very essential part of Federal fisheries policy.

Thank you.

[The statement of Mr. Hamburg can be found at the end of the hearing.]

Mr. MANTON. Are there any other members who seek recognition for purposes of an opening statement?

**STATEMENT OF HON. MARIA CANTWELL, A U.S.  
REPRESENTATIVE FROM WEST VIRGINIA**

Ms. CANTWELL. Thank you, Mr. Chairman, I would just like to submit my statement for the record.

Mr. MANTON. Without objection.

[The information follows:]

**STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON**

Mr. Chairman, I want to commend you for holding this hearing on the Magnuson Fishery Conservation and Management Act. I greatly appreciate the time and attention you and the Subcommittee have put into the reauthorization of this Act which is so critical to the economic future of the Pacific Northwest and the nation.

The Magnuson Act is the foundation of America's commercial fishing industry. As Members of Congress and as a Committee, we have the responsibility to ensure that the Act's management regime functions in the best possible manner for the benefit of the entire U.S. fishing industry. As a representative from the Northwest, I have heard far too many times this year about companies in my region which have lost vessels and lost opportunities due to restricted access and dwindling resources. We need to strengthen and update the Act—to ensure the long-term health of our nation's fishery resources and to ensure the survival of this most essential industry.

We need real, workable solutions to the issues we have heard in testimony throughout this process. We must resolve conflict of interest problems which have eroded the accountability of the council process in the public eye. We must determine whether the councils, under their current structure, are really able to manage our resources in a way that is "fair and equitable to all such fishermen" (National Standard #4). With American fishermen competing with each other over dwindling resources, we must ensure the least amount of fallout from the allocation decisions that are becoming the necessary tool of management. Finally, our nation's marine resources will only provide us with a long-term yield if adequate conservation measures are implemented. Conservation of our resources and a viable industry can go hand in hand but we must make decisions now which will bring us long-term stability and growth.

Mr. Chairman, these are tough and controversial issues. However, I believe that this Committee is ready to face up to them and address them in a meaningful way. Coming from a region with a heavily resource-dependent economy, I understand the importance of making wise management decisions. I look forward to our continued work on this important reauthorization and to the resolution of these critical issues.

Thank you.

Mr. MANTON. Any other Members?

If not, we will proceed with the witnesses.

Mr. Grader.

**STATEMENT OF ZEKE GRADER, EXECUTIVE DIRECTOR, PACIFIC  
COAST FEDERATION OF FISHERMAN'S ASSOCIATION**

Mr. GRADER. Thank you, Mr. Chairman and Members.

My name is Zeke Grader; and as Congressman Hamburg just told you, I am Executive Director for the Pacific Coast Federation of Fishermen's Associations. We represent fishermen engaged in a number of different types of fisheries. However, the principal one is the salmon fishery.

Today I would like to summarize my comments—you do have copies of our written testimony—and focus just on, I think, the single most important issue for us in this round of Magnuson Act reauthorization, and that is the need to finally extend jurisdiction to fish habitat.

Our organization was intimately involved in the passage of the Magnuson Act back in 1976; and at that time, we were optimistic because we thought, in fact, there was language in the bill that would finally address fisheries habitat at least for anadromous fish. And, indeed, if you go back and look at the language in the original act, there are at least four different sections that I think basically support such an argument.

What we saw, however, in the implementation of the Magnuson Act was that States and others concerned about their turf sought to restrict Magnuson Act jurisdiction solely from the beach to 200 miles, over those fisheries that were under management plans. The management then was strictly that of managing the users, that is restricting catches. There really was no other type of management.

For those of us who had experience dealing with salmon, it was obvious that the declines that had occurred well before the passage of the Magnuson Act, really over a period of at least a hundred years, were, quite frankly, habitat related. We had, after all, along the Pacific Coast, the method of restricting fishermen; we had that long before we had the Magnuson Act.

The Magnuson Act played an important role because it finally gave us the ability to restrict foreign fisheries. But what we quickly found out is we did not have the ability to restrict those activities that were severely affecting fish habitat and, consequently, the fishery resource.

The salmon resource is terribly important to the West Coast because, keep in mind, other than Southern California from Central and Northern California all the way through Alaska, salmon really is a symbol of the Pacific Coast.

It is important for food production, for jobs, for support of the local economies, for recreational opportunities as well as for the tribal fisheries. It is the fishery that has historically employed the most people in the fishing industry on the West Coast; and, frankly, it is a pretty sorry thing to say that if we could not manage this properly, could we then expect to manage any other fishery properly?

Let me very quickly, tell you why if we get a handle on habitat issues we are going to lose our salmon resource. In the Central Valley, for example, the Sacramento-San Joaquin system, which was the second largest producer of salmon in the lower 48, second only to the Columbia, there once was 6000 miles of spawning habitat. Today there is probably less than 500 miles.

The first salmon species on the Pacific Coast to become listed under the Endangered Species Act was the Sacramento winter run chinook. On the Klamath-Trinity, we have seen gross negligence. "Gross," I think, "negligence" in allowing the destruction of critical habitat is perhaps too kind a word. It was criminal the way that the Department of the Interior, in its operation of its water projects, basically destroyed, or all but destroyed the salmon resources in that river system, not only in violation of their trust re-

sponsibility to the four tribes of the Basin—everybody seems to forget the Klamaths—but they had a dam put in the way of their fish as well as the other three—the Karuks, the Hoopas, and the Yuroks— but in violation of their public trust responsibilities.

I suggest looking at page five in my prepared testimony, quoting the statement from the Pacific council outlining how bad the habitat problems are. Certainly the habitual situation is no better as you go north, and you look at what happened just this year in the Columbia River, particularly with the biological opinion issued by the National Marine Fisheries Service. Here the agency found clearly that the dams on the Columbia were the major culprit; they were causing the declines of the fish; yet despite this the National Marine Fisheries Service issued a “no jeopardy” opinion on the operation of the dams.

To us, this is crazy. If you are going to protect the fish, you have to start addressing the habitat issues.

I see my time is about up, and I would be willing to discuss this further in questions; I think it is important if we are going to protect not just salmon but many other of our other fisheries that are estuarine and wetland dependent that the Magnuson Act has to be extended to include habitat. If you don't extend that jurisdiction to habitat, we are going to lose most of the fisheries that you have charged the management councils and the Department of Commerce with managing.

Thank you.

Mr. MANTON. Thank you, Mr. Grader.

[The statement of Mr. Grader can be found at the end of the hearing.]

Mr. MANTON. Mr. Pliny E. McCovey, Sr., Vice Chairman of the Hoopa Valley Tribal Council.

#### STATEMENT OF PLINY E. MCCOVEY, SR., VICE CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL

Mr. McCOVEY. Good day, Mr. Chairman, Members of the Committee. I am Pliny McCovey. I am the Vice Chairman of the Hoopa Valley Tribe, situated in northern California. Our tribe is most appreciative of this Committee for its interests and concerns and views of the Native American people in the reauthorization of the Magnuson Act.

I would like to present our written statement for the hearing record and verbally summarize our presentation.

Mr. MANTON. Without objection.

Mr. McCOVEY. The Hoopa people lived in the Klamath River Basin region of Northern California for over 10,000 years. Our tribal members have depended on the anadromous fishery resource of this area for subsistence, ceremony, and in commerce.

Our tribe has reserved fishing and water rights held in trust by the United States through our government-to-government relationship for over 100 years. The Magnuson Act established management processes for numerous marine fisheries for the exclusive benefits of Americans including the anadromous fishery of the Klamath basin.



Our tribe has participated in the annual management process of the Pacific Council through numerous testimonies and provision of fishery data. The Tribe also holds a seat on the Klamath Fishery Management Council which provides salmon harvest allocation recommendations and technical support for the Pacific Council.

In early August, I testified before the Senate Commerce Science and Transportation Committee on the reauthorization of the Magnuson Act and recommended that tribal governments be legislatively provided representation on the regional fisheries management councils.

I repeat that request in this Committee and have included our Senate testimony for the hearing record.

Today I would like to concentrate on our recommendations on fishery conservation issues the Committee should consider in the reauthorization process.

I have enclosed for the hearing record a September 10, 1993, letter from the Hoopa Valley Tribe and the Secretaries of Commerce and the Interior Departments urging the Pacific Fishery Management Council to include a spawner deficit accounting concept in the 1994 management plan regarding the Klamath fall chinook salmon.

Although our request for spawner deficit accounting focuses on the Klamath salmon stocks, we firmly believe that this concept should be incorporated in future reauthorization legislation.

Basically, spawner deficit accounting for fisheries management would require that any year in which spawner escapement did not meet or exceed the escapement floor in the fishery management plan, the difference between the actual escapement and the floor would be counted as an offset and added to the escapement floor in the following year. This offset difference would be added as supplemental escapement in the next year. The spawner deficits would not be cumulative from year to year, nor would the supplemental escapement be allowed to exceed the capacity of the spawning habitat.

Our proposed spawner deficit accounting requirement would make fisheries conservation an institutionalized priority consideration for the regional management councils for long-term protection and expansion of the resource for all users.

The current economic consideration of harvest quotas has created a haphazard emergency rule situation further jeopardizing the resource. In times of average abundance, economic consideration could continue to guide management decisions; and in periods of resource scarcity, conservation should be the required guiding management principle.

The actual fisheries management decisions over the last decade under the Magnuson Act have exhibited a definite inclination toward socio-economic interests of today rather than the long-term health and abundance of fisheries resources.

The Hoopa Valley Tribe's Harvest Management Principles have always demanded diligent stewardship of nature's gifts based on our cultural values and integral with the great spirit's natural resources.

How sad it would be if future generations of Americans could never experience and know what wild salmon are in all of their

beauty. Our Tribe believes that with conservation as a management principle, especially in times of scarcity, this precious resource will regenerate and be sustained forever.

Thank you again for the opportunity to present my recommendations.

Mr. MANTON. Thank you, Mr. McCovey.

[The statement of Mr. McCovey can be found at the end of the hearing.]

Mr. MANTON. Our next witness is Mr. Eldon Greenberg on behalf of Mr. Thomas J. Murray, Resource Economist, Seafood Consumers and Producers Association.

**STATEMENT OF ELDON GREENBERG, PARTNER, GARVEY, SCHUBERG & BARER, ON BEHALF OF THOMAS J. MURRAY, RESOURCE ECONOMIST, SEAFOOD CONSUMERS AND PRODUCERS ASSOCIATION, INC.**

Mr. GREENBERG. Thank you, Mr. Chairman, and Members of the Committee. My name is Eldon Greenberg. I am a partner in the Washington, D.C. law firm of Garvey, Schuberg & Barer.

I would like to express the regrets of Mr. Murray who, although he was invited, was not able to be here today because of an illness in his family. I am pleased, however, to be here in his stead to present the views of Seafood Consumers and Producers Association concerning reauthorization of the Magnuson Act.

Our views are, perhaps, somewhat different than the previous witnesses, and that perhaps reflects a difference in geography. Seafood Consumers and Producers Association is headquartered in Tampa. It reflects a perspective that is focused on fisheries in the Southeast rather than those in the Northwest or Alaska. But, on balance, our view is that the current structure of the Magnuson Act is workable and that the problems we see in this statute are more ones of implementation of existing statutory mandates than in the statutory framework itself; and we believe that there is something to be said for both statutory and regulatory flexibility, allowing the agencies to deal with the statutes and regulations that they have and giving businesses a planning horizon that extends beyond the next council meeting.

In my testimony today, let me focus on four areas with which we have been deeply concerned: highly migratory species management, council composition, the need for stable justifiable regulatory programs, and criteria for limited entry.

With respect to management of highly migratory species, our view is that the current statutory framework which was just put in place in November of 1990 essentially reflects the right congressional choices. We believe the Secretary of Commerce should be in charge of managing highly migratory species on the Eastern Gulf Coast and the Caribbean.

We believe it is appropriate to take into account the international context within which management of these species must be viewed. There have been problems in implementation of management measures under the highly migratory species authority. We are hopeful that they can be resolved as NMFS gets more experience with its statutory authority.

We have two recommendations to make in this regard. First we believe that it would be appropriate for Congress to make statutory provision for the creation of advisory bodies such as AP scientific and statistical committees, plan teams, and the like to advise the Secretary in carrying out his management functions.

And, secondly, we believe that Congress needs to direct that in those areas where there is not international agreement, priority attention be given to develop international management measures, particularly in the shark fishery where we now have domestic management which restricts U.S. fishermen but no comparable international management scheme.

Let me now turn to council composition and conflict of interest. Here we believe Congress made laudable efforts in 1986 and 1990 to alter the act's appointment provisions and seek to remedy council imbalances. We cannot envision a productive way to further fine tune the appointment process.

We continue to believe that interest group representation is appropriate on the councils. It may be claimed that the continued emphasis on interest group representation will exacerbate perceived problems of conflict of interest.

We do not view conflict of interest as a major problem. We think that an effort to try to impose significant conflict of interest restrictions would hamstring the councils and ultimately be unworkable.

The third issue which I wish to address relates to requirements for stable and scientifically justifiable regulation. In the Southeast, we have relatively well-established fisheries. The capital's largely been bled out of them.

What we need is a period of stability of regulation where the NMFS effort is focused on developing adequate scientific data and information, not constantly having to adjust to new regulatory requirements. Having positive stability as a desirable goal in these fisheries, let me make three modest suggestions for change to ensure that the scientific basis for regulation is adequate.

First, regulation should be based upon a clear preponderance of evidence before the councils; secondly, regulation should be the least restrictive possible in terms of its impact upon participants; and, third, where there are major allocation issues to be decided by the council, there should be a cost benefit analysis so that we understand in precise dollar terms what the impact of regulation is.

Finally, with respect to limited entry, let me just say that at this point we don't have adequate rules in the statute for development and implementation of limited entry programs. The statute is essentially silent with respect to the substantive criteria for limited entry.

I don't have specific recommendations to make in the limited entry area. We would propose that this is an area which deserves further study. We suggest it may be appropriate to appoint a review commission which would explore the parameters of limited entry and recommend concrete proposals to the Congress for statutory changes both in procedures and standards applicable to limited entry programs.

Thank you.

Mr. MANTON. Thank you very much, Mr. Greenberg.



[The statement of Mr. Murray can be found at the end of the hearing.]

Mr. MANTON. Our last witness is Ms. Linda Johnson, President of Do You Care? Coalition.

#### STATEMENT OF LINDA JOHNSON, EXECUTIVE DIRECTOR, "DO YOU CARE?" COALITION

Ms. JOHNSON. Ladies and gentlemen, Mr. Chairman. My name is Linda Johnson. I am Executive Director of the "Do You Care" coalition for commercial fishermen in the Gulf of Mexico. Our headquarters are in Kenner, Louisiana. Our main concern also, as my predecessor, is with resource; but our main concern is the makeup of the council, the allocative schemes of the Gulf of Mexico Fishery Management Council in regards to red snapper, in regards to by-catch issues on the red snapper imposed on the fishermen.

We have been oppressed for the last 12 years. We have been fighting for survival for the last four years. We have now gotten a body together that is for the elite of this country with their big sports fishing boats that go out into the EEZ with no regard.

Commercial fishermen have always been the creation of wealth. Recreational fishermen has been the redistribution of wealth. We supply jobs. In our region, we are treated like we are criminals. We want protection of resource; we want conservation of resource.

There is no such thing as preservation of resource because you will have an overabundance of any resource, and you can walk on their backs such as red snapper and red drum in the Gulf of Mexico right now. When you shut commercial harvest down to any resource, you don't get true scientific data. National Marine Fisheries Service has been playing with artificial data. They play with paper fish and rubber ducks. That is not reality. That is not what our lives are made up of.

The commercial red snapper fishermen in the Gulf of Mexico went from 1990 a 12-month season in which they had a three million pound quota to, in 1992, a 53-day season with the same three million pound quota.

If this is an overfished fishery, I don't know what we are going to have because according to National Marine Fisheries Service we have a 1.5 percent SBR, spawning biomass ratio, in the Gulf at the present time. Ten times that amount to reach—or 15 times to reach a 20 percent SBR would be astronomical; there would be no room for any other species in the Gulf of Mexico.

I do have specific suggestions for revision of the Magnuson Act in regards to our concerns. One, we want to make sure that all of the regional councils are equally balanced between commercial and recreational representatives with no other category. We cannot hide in the guise of academia appointments that are, in essence, recreational appointments to the bodies that govern all user groups.

We want to make sure what is already required by Magnuson be adhered to in regions in regards to social and economic impacts with regulations passed. They must be considered equally, and they must be taken into consideration with the scientific data. They are not. That the budget of the National Marine Fisheries Service not

be used for artificial intelligence that never gets corrected but rather for independent assessments with empirical information becoming the virtual reality.

We need regional power given to regional directors of National Marine Fisheries Service without hidden agendas by the AA with a balanced input from all user groups as well as the empirical and artificial data combined. The State directors have too much power on the councils, and they should sit on the councils as advisers with no vote.

Implement a ninth regional council for the State of Florida alone to be self-contained and not influence the South Atlantic nor the Gulf Council. That is because of the vast number of recreational fishermen and the power that Florida has on influencing the assessments in the South Atlantic and the Gulf region.

We also suggest, not at the present time but in the future, that the AA for National Marine Fisheries Service should not be someone from within the agency. It should be an independent with understanding of natural resources in our American waters and the user group of these resources, that public comments at public hearings be given some credence when establishing regulations instead of a system that just tried to look like they are filling a requirement of the Magnuson Act when, in fact, they have already made decisions.

Do not waste our money because we spent our money to attend these meetings. Do not waste our time; do not waste our efforts. Valuable information can be obtained if people know that you care about what they have to say. We do have information; we do have anecdotal empirical information; we do have reality to present in regards to resource and what is going on.

Council meetings, consequently, should be held in areas of concern of harvest of the resource being discussed and not put in such as Islamorada, Florida, which you have to drive to from Miami to discuss red snapper when there is no harvest of red snapper in the area.

If there is public comments taken on a resource, the turnout can be small because the industry may not be able to afford to go where the meeting is being held.

These are major concerns to the industry in my area. I would like to thank all of you for giving me this opportunity to put our concerns forward.

[The statement of Ms. Johnson can be found at the end of the hearing.]

MR. MANTON. Thank you, Ms. Johnson. We will now go to some questions from the Members. I have one or two myself at the outset.

MR. THOMSON, in your testimony, you cite some tremendous figures for discards. Was this the result of roe stripping? And if so, what level of discards do we currently have?

MR. THOMSON. Mr. Manton, the 209 million pounds of wasted fish was in 1991 from the Bering Sea and it was not just roe stripping. It actually is a cumulative figure from the nonselective trawl fisheries, primarily the offshore groundfish fisheries.

MR. MANTON. You also cite dangers associated with bottom trawling in crab nursery areas and areas where there exists juvenile

Pods. To protect these areas, how much ocean bottom would need to be placed off limits?

Mr. THOMSON. The particular king crab nursery area which we identify in our paper, was long closed during the years of foreign fishing off the coast of Alaska and the Bering Sea. The prolonged closure demonstrated that foreign fishermen could harvest all of the quotas, while still protecting the crab. That area encompasses about 9,000 square miles. A closure of this entire area to U.S. trawl boats today would not result in the fishermen being unable to harvest their quotas.

Mr. MANTON. Mr. Grader, you feel that the depressed salmon runs could be helped by tagging all hatchery salmon and targeting fishing efforts only on hatchery salmon in order to reduce pressure on wild runs.

Is there a way to direct high seas or end river fishing efforts only on hatchery fish?

Mr. GRADER. Yes, Mr. Chairman, there is. This concept has been the subject of long debate and a great deal of thought. The high seas directed fishery, that is the ocean fishery on salmon off the coast, is a hook and line fishery. Salmon are taken with barbless hooks both in the ocean commercial and the recreational fishery.

In fact, the reason barbless hooks are used is to permit the release of undersized fish. With an adipose marked, clipped salmon, which is how they now mark hatchery fish, it is possible to readily identify that fish when taken from the water and for fishermen to release unmarked salmon with a very good chance for that released fish's survival. We're probably talking about a mortality of maybe 10 to 15 percent. And if we perfect our techniques more, hooking mortality could be reduced even further.

So I think, for the ocean fishery, a targeted fishery on hatchery stocks presents no problem. It could, however, create a problem for some of the in river fisheries. You would have to be very careful because there you are talking about a gill net take.

For example, on the Klamath River, which I am familiar with, part of the way you could deal with the fishery there is by simply going away from the gill nets and going back to the more traditional weirs, which was the way that the tribes traditionally harvested the fish, allowing the passage of unmarked fish. It would then be very easy to select out the hatchery fish for take from the wild unmarked fish which you would be released. This would continue until such time as the wild runs were rebuilt to where it was safe to begin harvesting them again..

I might add, as well, that we are particularly intrigued with the Hoopas proposal for deficit accounting; and, indeed, that has some merit. The problem with it, however, though is that the Department of the Interior, while they would readily go for deficit accounting of fish the following year, they have not been willing to go to a deficit accounting as far as releases of water from the dams are concerned. And that is the key factor if, in fact, we are going to put additional fish back into these river systems, whether it be deficit accounting or such as the Secretary of Interior did this year. You have got to have water for them. It is hypocritical for the Secretary of Interior to call for more fish back into the river unless he



is willing to provide more water for those additional spawners through flow release from Interior's reservoirs.

Mr. MANTON. Thank you, Mr. Grader.

Ms. Johnson, perhaps you could elaborate on how NMFS could better use their funds for gathering independent assessments based on empirical information as you earlier suggested?

Ms. JOHNSON. The National Marine Fisheries Service right now does not go back and correct what they started out with. So though I have no problem with Dr. Philip Goodyear's model, I have a problem with the information fed to Dr. Goodyear's model.

If he would take accurate assessments and accurate catch histories, we have to report every pound of fish within 72 hours. This information is made readily available to the regional director. They call every two days or so to check dealers during the open commercial harvest season.

They have to take a look at the CPUEs, which is made available to them because we have to report the number of lines we fish, the number of hours that we fish, the number of men that we fish, and the time that it took us to harvest.

If they look at the catch rate of the commercial harvest and they do some kind of true assessment for the recreational fishermen and spend their money getting the real data that is coming out of the water, they will find that the resource is not in the condition that they perceive it to be in.

Mr. MANTON. Thank you. My time has expired. The Chair will recognize Mr. Hamburg from California and ask if he would be kind enough to take the Chair while I leave the meeting room temporarily.

Mr. HAMBURG. [Presiding.] The first thing I get to do as Chair here is recognize myself for questions. I guess that is the benefit of being here.

Mr. Grader spoke to the issue of implementing the deficit accounting program and how that—how you really don't feel that that would be a fair thing to do unless the Secretary made certain changes in the water flow in the Trinity and the Klamath.

And, indeed, there have been some steps in that direction to make sure that additional flows from the CBP come into our rivers.

And just let me ask you to elaborate for a second, if you would, Mr. Grader, on, do you think that those protections potentially will be significant in terms of restoring the runs in the Trinity-Klamath system?

Mr. GRADER. We made big strides, I think, largely to the credit of the Hoopa Tribe, California Trout, our own organization, and local authorities and then Secretary of Interior Cecil Andrus who worked to get study flows, additional flows into the Trinity. And that, obviously, has helped during the past 12 years when the Bureau of Reclamation has made the study flow releases.

Keep in mind, they fudged on a few years. In fact, the floor for the Trinity River releases is based on the study; flows of approximately 330,000 acre feet annually. The big problem we have right now, though, is not on the Trinity so much, as it is on the main stem of the Klamath where we are simply not getting the releases there into the main stem where we have warm water conditions. We have low flows. And it is really creating a major problem.

It is making it hard, for example, for the Hoopas to get fish back to the Trinity when there are bad conditions on the mainstem Klamath. I think it would have been a little more palatable had the Secretary of Interior, this year, when he was being righteous about the resource, saying we have got to have more fish back in the river, had he offered to release some water out of the Klamath Reclamation Project into the river to provide for those additional spawners. He didn't do it.

Mr. HAMBURG. He also didn't implement deficit accounting.

Mr. GRADER. No. But if you look at the history of that resource, you will see what happens. Even in the years when spawning escapement has fallen below the floor, there has been very good production. The resource seems to be more—and I think that the records bear us out on this—responsive to the water and habitat conditions in that river system than anything else.

Putting additional spawners in the Klamath River right now is a waste of fish; it is a loss of fish to the tribes; it is a loss of fish to the trollers; it is a loss of fish to the sports fishermen unless you have additional water.

If there were additional water provided, I think, all of us would approve of putting more spawners in the river, because it would mean more fish for the future. But absent that, it is a waste of fish.

Mr. HAMBURG. Mr. McCovey, would you just comment on what effect you think the deficit accounting regime would have on the tribe's annual harvest of Klamath fall chinook?

Mr. MCCOVEY. Well, the deficit accounting is a principle that has been brought forth simply because of the low numbers of spawners returning for three consecutive years.

The spawning escapement floor has been set at 35,000. We have had a whole brood cycle of sub-floor escapements at 11,000, 15,000, and 11,000 "natural" chinook. So we are in a real tough time here. And we are not in a time of abundance—we are really worried about whether sub-basin stocks can actually survive or not.

This is why we brought this spawner deficit accounting principle forward. Pardon my way I say it, but it is like writing a bad check all the time, you know; eventually you have got to pay it back. Finally, the tribes would have reduced their harvest of Klamath fall chinook in order to meet the intent of providing additional spawning in the Basin.

Mr. HAMBURG. Would you agree with Mr. Grader about the problems with flows on the main stem?

Mr. MCCOVEY. We have fought long and hard to establish minimum flow criteria for the Trinity. I think that 340,000 acre feet per year is a minimum to maintain fish populations at present levels and we need to provide additional spawners back to the Basin to fully restore the fish population.

I would agree with him that given the minimum mandated flows for the Trinity, it isn't as chronic a problem as the Klamath.

Mr. HAMBURG. The Klamath seems to be the problem.

Mr. MCCOVEY. And the degraded habitat from logging and so on and so forth. There have been a lot of problems, I agree. And I welcome Mr. Grader's suggestion that deficit accounting is a valid principle and urge this panel to accept it as well.

Mr. HAMBURG. OK. Before my time runs out, I just want to ask a question about the Pacific Fishery Management Council and its function.

When Chairman Studds came out and did a hearing with me in Fort Bragg recently, the issue was raised that the council is not meeting as regularly or as often as people would like. And the reply we got from the Regional Fisheries Management Council was they did not have adequate funds; they have a greater workload than some of the other councils; and perhaps they need a bigger share of the pie.

I would like to—Zeke, if you would just comment on the functioning of the management council. Do you feel that the PFMC has adequate funds? And could you elaborate just briefly on how you believe it could manage the Pacific Coast fishery more effectively.

Mr. GRADER. Well, I would agree. I think this regional council—I can't speak for the others—but certainly from what I have heard from other regions is that they, too, are underfunded.

Not only are they underfunded as far as the routine of their meetings and making the process accessible and being able to respond in a timely manner—those are two key things, accessibility and responding in a timely manner—but, frankly, I think the councils, each one of them, needs two additional staff members.

They need, first, a habitat officer. Fish habitat is critical in most every part of the country, and each of the regional councils needs at least one staff person assigned to critical habitat issues.

Second, they need their own counsel. I am spelling it c-o-u-n-s-e-l. Presently, the attorneys assigned the regional councils have a conflict of interest. The conflict of interest this body has been hearing about and the Senate too with the regional councils is not among the members of the council; it is with their legal counsel.

You can't be loyal to both a regional council and the Secretary of Commerce. That is where council's attorneys have a real conflict of interest. The councils need independent counsel. That should be dealt with by reprogramming NOAA General Counsel's budget and giving some of that money to the council so they can have their own lawyers.

Mr. HAMBURG. Thank you very much.

I would like to recognize Mr. Kingston for questions of the witnesses.

Mr. KINGSTON. Thank you, Mr. Chairman. I just have one question.

Ms. Johnson, you said that the State directors were too powerful and should not have a vote. Can you elaborate on that and give us some examples? And do you think that this is a question unique to your area? Or is that prevalent throughout the country?

Ms. JOHNSON. I know it is prevalent in the Southeast Regional Council, and I know it is prevalent in the Gulf of Mexico Regional Council.

What has happened is they have become entrenched where council members change, and then we came up with the other categories so that the balance gets tipped in our region especially to the recreational sector.

We are not saying that any user group is doing any damage et cetera. But when a State director comes in, he is going to do—that



was also my suggestion for the Ninth Regional Council of Florida being that their main interest is the recreational fisherman. Consequently, the data that comes out of Florida influences what the councils hear.

Also, the head that comes to the meeting is a very powerful man. He has been entrenched a very long time. And he swings votes toward his way of thinking. And I find that very unjust.

The commercial sector in our area is not given any respect, and it is not given any credence. It is strictly for the elite in our section. We have been severely penalized, where the recreational sector has not.

The State of Louisiana is dependent on resource for our small coastal communities, et cetera. And, like I said, we will have hard times in all resources if this is not addressed. Our State director happens to be a wonderful man, but they are not all wonderful men and they are not all fair minded and not biased toward one side or another. And I do feel that it is probably more indigenous to our region in the Southeast Council and Gulf of Mexico Fishery Management Council.

Mr. KINGSTON. Thank you, Ms. Johnson.

Thank you, Mr. Chairman.

Mr. HAMBURG. Thank you.

If it is OK with you, Mr. Kingston, could I just ask another question or two before we adjourn this hearing?

Thanks.

Mr. McCovey, the Hoopa Valley Tribe has invested a lot of time in its fishery and yet you have a relatively small part of the take of fish from the system. And I would like to ask you why the Hoopa Tribe is investing so much time and energy in this fishery?

Mr. McCovey. Well, Mr. Chairman, I think that we are geographically at the end of the harvest process. Adult salmon are first impacted in the ocean, and go through up to the Klamath through another tribal fishery. By the time the salmon arrive in Hoopa they have already been impacted by at least four fisheries. We are at the end of the cycle where it begins and where it ends. So this is why we, I think, are really interested in what happens. As I stated before, our people have inhabited the Basin for 10,000 years. We continue our work today as resource managers through our participation with the Klamath Task Force, the Trinity River Task Force, and the Klamath Fishery Management Council.

We have people that are involved integrally with numerous State, Federal, and tribal agencies. And we are involved with the Bureau of Reclamation regarding Trinity and Klamath Stream flows. And it is in our best interests to be a part of this whole thing.

Mr. HAMBURG. Thank you.

And, Mr. Grader, if I could just ask you a final question, if you would care to elaborate any further on recommendations under the changes of the Magnuson Act.

You have spoken a lot, and your testimony was pretty detailed on the need for the councils to have greater jurisdiction over habitat. And I guess one of my questions about that is, in this round of reauthorizations, how far do you think we can go with that? Should go with that? And what other changes in the Magnuson Act specifi-

cally that you haven't had a chance to mention yet would you like to bring up and get into the record at this point?

Mr. GRADER. Yes. Thank you, Mr. Hamburg.

I think anybody remembers there is an old advertisement about, I think it was fuel filters or oil filters, it said you can pay a little bit now, or you can pay a lot later.

That is basically what they are doing in the salmon right now because what we are doing is, we are finally addressing habitat; but we are not doing it in the Magnuson when stocks are healthy. We are addressing them now under the Endangered Species Act when they are on the verge of extinction.

I think if you provided language similar to what right now is in Section 7 of the Endangered Species Act on consultation, provide the councils working through NMFS Section 7-type of consultation, it doesn't get them involved in micromanaging habitat in other areas of Forest Service or the BPA or the Central Valley Project or anything like that.

But what it would do—or with the Corps of Engineers on wetlands or discharges and dealing with regional water boards. What it would do, however, is that where those type of actions, activities of other agencies, affected fish habitat—that is fish that are under a council management plan, those councils would then, basically, have the authority to come in and require some sort of consultation.

I think that is imminently doable, and I think it is at least a first step that is needed doing if we are going to protect a lot of these species under Magnuson, if we are truly going to manage fisheries and not just regulate fishing.

Some of the other things I mentioned—and I am fairly keen—I think you mentioned it in your question, Mr. Hamburg—was the fact that the councils really need to be adequately funded.

I think if you are looking at anything, particularly right now in the NOAA budget, is to be sure that they are properly funded so they can do their job. They are so critical because they provide, whether it is the blue collar angler or the mom and pop fishing operation, the access to the management process.

You don't get that if you centralize everything in Washington with a commerce czar or a salmon czar, some other type of fishery czar. In fact, the very term "czar," you know, annoys me because people have forgotten their history. The revolution happened for a purpose. But the fact is we need to have this regional sort of democracy. And the way to maintain it is by making sure that these councils are funded.

And, with that, I think it is obvious we need to have funds there not only for them to meet properly as often as needed but also to provide them additional staff. They have to have somebody there to look at habitat. And I, frankly, think from particularly what we saw this last year at the Pacific Council, they need to have their own independent legal staff.

I don't think—no more than what your local city councils have or your counties have. Oftentimes they contract out for it. But at least they have somebody who is there who is loyal to them.

Mr. HAMBURG. Thank you.

Are there any other witnesses who would like just to make a final comment on the Magnuson Act, you know some things that you weren't able to say that you wish you would have gotten into the record, before we close this hearing?

Yes, Ms. Johnson?

Ms. JOHNSON. I just want to reinforce what Zeke said. I agree with him 100 percent.

And I also feel that, not the councils necessarily, but that the power has to be taken out of Washington and put more regionally. And their budgets have to be addressed accordingly, that each region have the power over their own region. And that is why I said what I did in my outline also.

But I just wanted to reinforce what Zeke said. I agree with him.

Mr. HAMBURG. Thank you.

Mr. Greenberg?

Mr. GREENBERG. I have nothing to add.

Mr. HAMBURG. Mr. Thomson?

Mr. THOMSON. Just a brief comment, Mr. Hamburg.

The Alaska Crab Coalition would just like to point out that we have some similar problems up in Alaska as they have in Florida in terms of, "conflicts of interest" on the part of some of the very influential Alaska State representatives on the council who are creating some tremendous allocative problems. Ultimately, there will be some conservation problems related to that, and we think that needs to be addressed in the act.

Mr. HAMBURG. OK. Thank you very much.

I want to thank all the witnesses. Your testimony was excellent, and it will help us tremendously as we move forward on the reauthorization of the act.

I want to thank all the members of the audience and the staff and everyone. And with that, I will adjourn this hearing.

[Whereupon, at 2:41 p.m., the Subcommittee was adjourned, and the following was submitted for the record:]



**Statement of Mr. Ami Thomson**

**Executive Director**

**Alaska Crab Coalition**

**Before the**

**Subcommittee on Fisheries Management**

**House Committee on Merchant Marine and Fisheries**

**September 29, 1993**

Mr. Chairman:

I would like to express the appreciation of the Alaska Crab Coalition ("ACC") for the opportunity to present testimony before the Committee at this important hearing. I hope the Committee will recall that the ACC played a significant role in the development of the 1990 amendments to the Magnuson Fishery Conservation and Management Act.

For the current reauthorization process, the ACC has taken the initiative to craft additional proposed amendments. It is gratifying that major sectors of the Washington State-based fishing industry have agreed to incorporate a number of those proposals into a joint position paper. I am providing a copy of the ACC amendments and the industry paper for the record, and I will discuss several of the more important proposals in the course of my testimony.

The ACC believes that the enactment of the 1990 amendments, including particularly the North Pacific Fisheries Research Plan, led to improvements in our system of fisheries management. However, as reflected by the recommendation for further amendments, the ACC and many other industry groups believe that the nation remains

some distance from achieving the goal of ensuring that our valuable fishery resources are utilized in a responsible manner.

The Alaska Crab Coalition, a trade association comprised of the owners of more than sixty-five crab fishing vessels which operate in the waters off Alaska, has a record of strong support for responsible fishing. Our members experienced the costs of declining Alaskan crab resources in the early 1980's and the benefits of restored crab fisheries in the years that followed. We are very concerned about the failure of fisheries managers to take account of unanticipated, serious declines in the Tanner crab stocks this year. This experience points to the need for not only fishermen, but also fisheries managers, to operate in a responsible manner.

The Members of the ACC are also acutely conscious of the economic losses that have long been associated with the excessive levels of crab bycatch in certain groundfish trawl fisheries of the Bering Sea and Gulf of Alaska. We are aware, as well, of the economic waste that has resulted from the massive discards of target species in those and other fisheries. Although we are compelled to accept the fact that there are forces at work in the marine ecosystem that are beyond the reach of human intervention, there is much that can and should be done to ensure that fishing gear and practices are employed in responsible ways, so that waste is minimized.

Americanization of the groundfish fisheries of the Bering Sea, although a laudable goal and a great achievement, was not without risk, and did not come without cost. For example, the Bering Sea crab pot sanctuary, long closed to foreign trawlers by international agreement, was opened to American trawl vessels with the aim of stimulating the growth of our groundfish fishing industry. Unfortunately, the protection of that most critical nursery ground was sacrificed. The American groundfish fishermen took full advantage of the opportunity to increase their harvests, but at the same time, non-selective trawl gear inflicted substantial damage on incidentally taken crab resources. In this context, it should be noted that Russia has long maintained bottom trawl closures in

critical habitats of the Sea of Okhotsk, and has been rewarded with a rich abundance of valuable king crab.

Thus, the ACC feels that, in the United States, the pendulum has swung too far in the direction of development. Federal managers must no longer permit, much less encourage, fishing activities that significantly contribute to the depletion of bycatch species, many of which are in such poor condition that directed fishing is either prohibited or severely restricted, as is the case for king crab. This is not primarily an issue of allocation, as some in the would have the public, the Congress, and the Administration believe. Rather, this is first and foremost a matter of conservation.

Fisheries managers must face up to the fact that certain fleets long nurtured by our government, engage in fishing activities that are not only destructive of bycatch species, but also excessively wasteful of target species. For example, the use of very large trawl nets, for which there are no mesh size restrictions, results in high volume discards of target, as well as non-target, species. In 1991, according to the National Marine Fisheries Service, total pollock discards in the Bering Sea directed fishery for that species were 245,400,640 pounds. Of that amount, large industrial factory trawlers accounted for 85 percent--approximately 209,000,000 pounds. These total discards were equivalent in weight to about six times the entire commercial harvest of salmon in Washington State, or to the entire combined commercial harvest of herring, halibut, and shellfish in Alaska, during 1990.

Furthermore, it is reasonably estimated that, in bottom trawling operations, the "unobserved" bycatch of crab is ten-to-fifteen times the bycatch found in the nets. It is assumed that the mortality of crabs crushed beneath the non-capture parts of the trawl gear is very high. That mortality likely exceeds the levels experienced in the nets.

Underwater camera observations of the operation of bottom trawl gear leads many experienced fishermen, scientists, and other informed observers to conclude logically that

slow-moving bottom dwellers, such as crabs, are unable to evade trawl gear moving at speeds of three-to-four knots. Gear damage to juvenile "pods"--as many as 10,000-20,000 juveniles will mass together for predator protection--can have a devastating impact. Trawl gear damage to king crab during the soft shell molting season is also recognized to be severe. It is, therefore, extremely disturbing that fisheries managers are failing to manage adequately for these impacts. Notably, the crab industry has committed more funding to the study of these problems than has the federal government.

The effect of bottom trawling on the benthic environment is also believed to be quite significant. Crab in the first instar stage of development find refuge from predators by crawling into the subsurface layer of the seabed. As the ACC pointed out in its 1989 Congressional testimony on reauthorization of the Magnuson Act, bottom trawling in crab nursery areas may have a very detrimental effect on crab survival rates. The damage is a matter of particular concern, where the large nets and heavy doors and chains of industrial factory trawlers are used.

It is easy to understand why habitat studies are particularly important. The NOAA Outer Continental Shelf Environmental Assessment Program ("OCSEAP") has yielded useful data on the sensitivity of crab nursery areas. OCSEAP considers the North Aleutian shelf to be the primary habitat for king crab and is concerned about bottom trawling impacts. The Chairman of the North Pacific Fishery Management Council, in a letter to former President Bush concerning Lease Sale 92, also acknowledged that the habitat in that area is critical to crab, and to halibut, as well. The ACC finds it difficult to understand why federal fisheries management does not adequately reflect the singular importance of that habitat. The ACC believes that the NOAA Undersea Research Program should attach a high priority to habitat studies in this and other critical habitat areas.

Before leaving the subject of trawl impacts, a few clarifications are in order. Some in the trawl industry maintain that all fishing groups, no matter what gear they employ,

inflict bycatch mortality. What those people do not care to point out is the fact that the impacts vary greatly among the gear types. Trawlers, by the nature of their non-selective gear, inflict mortality not only on their target species, but also on the target species of most other gear groups. Thus, trawlers impose direct costs on other sectors of the industry by reducing the immediate and future harvests of the other gear groups.

Fixed gear fishermen, employing pots or longlines, also have bycatch impacts. For example, the bycatch of this gear, principally juveniles and females of the target species, represent foregone future harvests for responsible fishermen utilizing that gear. Consequently, fixed gear fishermen have a vested interest in minimizing bycatch mortality through gear design and fish handling techniques, as well as through strict quotas and time and area closures. Fixed gear bycatch does not impose direct costs on the trawlers' target species.

As for the crab industry, we have taken the initiative to propose crab fishing gear design requirements that greatly increase selectivity. In addition, when confronted with data suggesting declines in crab stocks, the ACC has been in the forefront of efforts to secure the needed time and area closures, reduced quotas, and other conservation measures. Unfortunately, fisheries managers have not always responded to our concerns, and as history shows, the resources have suffered under archaic management policies and practices.

Of course, these are not the only problems facing the fisheries off the coast of Alaska. It is an unfortunate fact that rapid overcapitalization of major fisheries in the Bering Sea and Gulf of Alaska, as well as elsewhere in our federal Exclusive Economic Zone, has given rise to severe pressures on fisheries managers to permit levels of exploitation that cannot be reconciled with basic conservation principles. Furthermore, the National Marine Fisheries Service and the Regional Fishery Management Councils have felt compelled to dedicate their meager fiscal and administrative resources principally to the development of systems for the allocation of limited--and all-too-often declining--fisheries resources

among competing sectors of our industry. In addition, special interest groups have succeeded in engineering the appropriation of scarce federal dollars to dubious purposes.

The Committee should find it interesting that, in the international context, when our federal fisheries managers have been freed of the intense pressures of certain sectors of our fishing industry, conservation properly has been the center of attention. At the United Nations Conference on Environment and Development ("UNCED") in Rio, the United States Government played a highly constructive, leadership role in the articulation of conservation guidelines, principles, and commitments under the new rubric of "sustainable use". At a 1992 conference in Cancun, Mexico, the U.S. contributed importantly to the development of international standards of "responsible fishing". A report issued by the ACC and published by the American Fisheries Society on the landmark achievements of the Cancun conference is attached to this statement.

Also attached is a document from a 1993 meeting of nations in Mexico to prepare the way for the development by the United Nations Food and Agriculture Organization ("FAO") of an international code of conduct for fishing in 1994. The FAO has recognized, among other significant factors affecting the sustainable utilization of fisheries resources, that overcapacity contributes to overfishing. In fact, a paper prepared by FAO for the 1992 Cancun conference stated, "The excessive level of fishing effort now existing in the world should be the primary concern in terms of sustainability of the fisheries resources."

The ACC closely followed the work of UNCED on sustainable development of living marine resources, and participated actively in the 1992 Cancun International Conference on Responsible Fishing. Our organization applauded the results of those conferences. Several developments are worthy of particular note.

UNCED proclaimed that, "States commit themselves to the conservation and sustainable use of living marine resources under national jurisdiction". The Conference recognized



"mounting problems" in the world's fisheries, including "overcapitalization and excessive fleet sizes...insufficiently selective gear, [and] unreliable data bases".

UNCED declared that, "[I]t is necessary to...promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species...[and] preserve rare or fragile ecosystems as well as habitats and other ecologically sensitive areas...." UNCED further declared that nations should "...[t]ake measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation...[and] [d]evelop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of environmental impact of major new fishery practices...." In designating protected areas, "priority should be accorded, as appropriate" to specific kinds of areas, including "spawning and nursery areas".

The 1992 Cancun International Conference on Responsible Fishing declared that "States should promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species." The Conference further declared, "States, in the design and subsequent introduction of new fishing gear and practices, should take into account qualified assessments of impacts on the sustainability of fisheries, giving due consideration to the specific characteristics and biodiversity of different fishing areas." "States should promote and enhance collection of data necessary for the conservation and sustainable utilization of fisheries resources." "States should take necessary measures to protect coastal wetlands and other areas of critical fisheries habitat from all kinds of degradation." And, "States should take steps to improve management systems as part of the practice of responsible fishing."

The Cancun Conference proclaimed that nations "recognize the principle of sustainable utilization of marine living resources as the basis for sound fisheries management policies. In this regard, they consider as one of the most important objectives the application of

policies and measures which result in a level of fishing effort commensurate with the sustainable utilization of fisheries resources, taking into account the specific characteristics of particular fisheries."

The July 29, 1993 Communique of the Inter-American Conference on Responsible Fishing, Mexico City, stated that the International Code of Conduct for Responsible Fishing should provide for sustainable utilization of resources. Improved gear selectivity was a key focus of the Communique.

The ACC believes that the Congress and our fisheries managers should provide for legislative and regulatory implementation of the key elements of the international consensus reflected in the Rio and Cancun declarations. The ACC notes the decision of the Clinton Administration to establish the Presidential Council on Sustainable Development. This, we hope, will contribute to the improvement of our fisheries management system.

It is true that general provisions of the Magnuson Act relating to conservation reasonably may be interpreted to be consistent with the new international guidelines, principles, and commitments. From that standpoint, an elaboration in the Magnuson Act of the central points accepted by the international community would not represent a departure from the basic framework of the prevailing domestic management system. However, experience has shown that the Magnuson Act could usefully be strengthened to provide our fisheries managers with greater leverage--and a more clearly defined responsibility-- to achieve conservation objectives in the public interest.

Certain industry groups in the United States will not welcome the express inclusion in the Act of provisions reflecting the international consensus that was achieved under U.S. leadership. The ACC would like the Committee to recall that some industry groups were strongly opposed to the North Pacific Fisheries Research Plan enacted in the 1990 amendments, a plan that is now almost universally recognized as indispensable to the

achievement of basic conservation and management objectives in the multi-billion dollar fisheries of the Bering Sea and Gulf of Alaska. It is a credit to the Congress that such opposition did not prevent the enactment of a highly worthy program.

I would like to take a few minutes to address the new industry position paper to which I referred at the outset of my testimony. Washington-based industry groups, including the ACC, the American Factory Trawler Association, the American High Seas Fisheries Association, the Fishing Vessel Owners Association, the Mid-Water Trawlers Cooperative, and the North Pacific Longline Association agree that the Act should be amended to provide expressly for the minimization of bycatch and discard waste. In addition, the groups agree that the Secretary of Commerce should be directed to establish a concrete mechanism to achieve that goal. A "vessel incentive program" should be established to hold individual fishing vessels accountable for their bycatch, so that entire fleets are not penalized for the irresponsible fishing practices of the worst offenders. Coupled with overall bycatch limits, as recommended by the industry groups, this "VIP" program would contribute significantly to control of wasteful bycatch. It is important to recognize that the need for this kind of program is acknowledged by major trawl fishing organizations.

Following the lead of the ACC, the Washington-based industry group proposes amendment of the Act to include a National Standard requiring that fisheries management measures promote safety of life at sea. This is a vitally needed provision. Fishing is, in many contexts, a dangerous occupation. Lives are lost in the federally managed "Olympic" style fisheries each year. Sadly, some of our management measures actually contribute to the dangers encountered by our fishermen. Overall, in 1991, the Bering Sea crab fisheries accounted for 51% of all fishing-related fatalities in the waters off Alaska-- 32 of the 63 lives that were lost. In the sablefish and halibut fisheries off the coast of Alaska, lives are lost each year in a mad scramble by thousands of vessels to harvest the available resource in a matter of hours or a few days. The prevailing system of "fishing derbies" requires that, if fishermen are to earn their livelihoods, they must do so without

regard to severe weather and sea-state conditions. Other fisheries, many of which are seriously overcapitalized, are experiencing varying degrees of the same problem.

Unfortunately, more humane systems of management are politically difficult to devise, as they involve some element of allocation of finite, and sometimes declining, resources. In the public debates and policy deliberations, safety issues tend to be lost, as the focus all-too-often falls on purely economic considerations. The Act must be amended to ensure that the priorities of our fisheries management system accord with the fundamental values of our society.

The ACC is joined by other industry groups in proposing amendments that would address overcapitalization in our fisheries, by providing in the Act that there should be avoidance or reduction and elimination of excess fishing capacity. We feel that the problem of overcapitalization is so serious and so widespread that it should be addressed explicitly and decisively in the National Standards of the Act. There may be proposals aimed at restricting the authority of fisheries managers to limit access. However, the ACC believes that the full array of limited entry options should be preserved, including those of individual fishing quotas and license limitation schemes.

There are further ways in which the Act can and should be improved. Controversy over allocation decisions cannot be avoided. However, industry and public acceptance can be strengthened. A means of achieving this, in the context of the fisheries off the coast of Alaska, would be to provide for a higher-than-usual level of concurrence among the members of the North Pacific Fishery Management Council. Requiring a two-thirds vote for allocations that would depart from historical shares in a given fishery would certainly contribute to the confidence of the affected industry and the interested public in the fairness of the management system.

Fees are currently being addressed by some public interest organizations and industry groups solely in the context of limited entry. However, it must be pointed out that any



fish taken from the Exclusive Economic Zone by any fishermen represents a private gain for which a reasonable fee might well be charged. It must also be recognized that, in a fishery successfully managed for sustainable utilization, the public loses nothing when a private company or individual gains. Fisheries resources are renewable, and fees should reflect that nothing is being taken from the public that cannot soon be restored. In that regard, the ACC recommended to Congresswoman Unsoeld that she ask the Congressional Research Service to prepare a study of resource-related fees. We are delighted that the Congresswoman saw fit to make the request. We hope that the study will contribute constructively to the development of a fair and reasonable fee system. In any case, the ACC and others in the Washington-based industry will argue strongly for dedication of fees from a particular region to the management of fish there, for authorization to use fees for the administration of limited access programs, and for the continuation of federal funding from general revenues for general fisheries management.

The ACC joins other Washington-based groups in proposing that a two-thirds vote be required of a council for the delegation of management authority to any state or other non-federal authority. This requirement would improve fairness in the system, by reducing the likelihood of politically-motivated decisions to delegate authority in a manner that would disadvantage non-residents of any particular State.

Finally, the ACC and the other identified groups propose that the Congress place concrete limits on allocations to local communities. So-called "community development quotas" can serve legitimate social and economic purposes. However, in the absence of explicit limitations, abuses can prove to be very costly to those who are not the recipients of the special quotas. We must remember that our fisheries are, for the most part, seriously overcapitalized. To provide special quotas to one group, it is necessary to reduce the harvests or the harvest capacity of others. There must be a balance between providing for development of truly disadvantaged local communities and allowing the economic survival of the historical participants in the fisheries. It is interesting that the earlier-referenced FAO paper prepared for the 1992 Cancun Conference stated, "Further

development of the fisheries sector cannot be achieved without an overall reduction of the [global] fleet size to a level where fishing effort, at the most, matches the maximum sustainable yield of the resources being exploited or, better, to an even lower level to ensure long-term profitability and sustainability of fisheries." This statement may be aptly applied to the case of the fisheries off the coast of Alaska.

In closing, I would like to tie a few of our more important points together. They all relate to the basic economic viability of the fishing fleets. The ACC recognizes that there is considerable interest in establishing substantial federal fishing fees. My organization can accept new fees, but only if they are set at economically sensible levels. That means that other fees, taxes, and costs must be taken into account.

In the North Pacific region, the State of Alaska already charges very substantial fees and taxes on vessels that operate not only in State, but also, in federal waters. In addition, the fleets from outside Alaska pay a high price for benefits to the State from dedicated groundfish quotas for local communities. Clearly, these special quotas reduce the available resources for those who have historically operated in the fisheries, and who must attempt to survive in an already heavily overcapitalized economic environment.

In short, there are limits to what the established fleets can sustain. New fees and quotas for local communities cannot be considered in isolation from one another, nor in isolation from other fees, taxes, and costs borne by our fishermen. In addition, it may well be that the elimination of excess capacity in the existing fleet will be indispensable to the further development of coastal community-based fisheries operations. Otherwise, neither the historical participants nor the new entrants can hope to benefit, and they will all be likely to suffer.

It should be remembered that the multi-million dollar investments in the development of the fisheries of the Exclusive Economic Zone were made in good faith reliance upon the Congressionally established policy of "Americanization". A new policy of

"Balkanization" through excessive community quotas would deal a severe and unfair blow to our American industry at large.

The ACC recognizes that it will not be an easy task for this Committee, the Congress, and the Administration to build upon the conservation-related provisions of the 1990 amendments and to bring the Act into conformity with the newly emerged concept of "responsible fishing" and new international standards of fisheries conservation and management. Nor will it be a simple matter to amend the Act to ensure that fisheries management measures contribute to safety and do not threaten it. Limited entry and community development issues will be very thorny. Nevertheless, the ACC believes that our government will rise to the challenge, as in 1990, and that our nation will be able to look forward to the sustainable--and safe--use of a national treasure, abundant fisheries resources.



## ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

October 29, 1993

The Honorable Thomas J. Manton  
Attn. Lori Rosa  
Subcommittee on Fisheries Management  
1334 Longworth House Office Building  
Washington, D.C. 20515-6230

Dear Mr. Chairman:

Attached are answers to the written questions provided to me under cover of your letter dated October 13. The questions address vitally important issues

On behalf of the Board of Directors of the ACC, I would like to thank you for the opportunity to testify before your subcommittee. The ACC greatly values the opportunity of contributing to the legislative process

Sincerely,

Arni Thomson  
Executive Director



## Answers to Written Questions

### Questions for Mr. Ami Thomson (Executive Director, Alaska Crab Coalition)

Question: The Alaska Crab Coalition has been critical of the bycatch of crab and other non-target species in the trawl groundfish fisheries. What do you see as the solution?

Answer: The Alaska Crab Coalition believes that an important part of the solution is to amend the Magnuson Act to provide a firmer legislative foundation for bycatch controls. We are pleased that the major organizations in the Washington-based fishing industry agree with us on that important point.

In addition, a system of "individual bycatch quotas" (IBQs), under aggregate bycatch caps and linked to "individual fishing quotas" (IFQs), should be adopted. IBQs would improve accountability for bycatch and create the incentive to utilize fishing gear and practices that minimize bycatch waste. Those fishermen having bycatches would be subject to sanctions. Clean operators, on the other hand, would be rewarded with improved fishing opportunities. Overall, bycatch would be reduced, and target fisheries would be less vulnerable to bycatch-related constraints. Responsible members of the trawl industry agree that this is the kind of system that should be adopted.

Question: In your testimony, you cite some tremendous figures for discards (bottom--page 3). Was this the result of "roe stripping" and, if so, what level of discards do we currently have? (Roe stripping is the process where fish eggs are removed--like caviar, except roe is from smaller fish.)

Answer: Roe stripping is not the central problem, although it was a major contributor to discard waste prior to the imposition of conservation restrictions. The attached article, dated October 17, 1993, from the Anchorage Daily News provides a description of the levels of discards from groundfish fisheries off the coast of Alaska. As the article shows, the great bulk of the waste is a result of the non-selective nature of the large-scale trawl nets that are dragged across the ocean bottom.

Question: You cite dangers associated with bottom trawling in crab nursery areas and areas where there exist juvenile pods (page 4). To protect these areas, how much ocean bottom would need to be placed "off limits".

Answer: I estimate that an area of some 9000 square miles would have to be closed to all trawling throughout the year. The area corresponds to the "Pot Sanctuary" that was established by the United States and foreign fishing nations to prohibit all trawling by foreign vessels in the crab nursery area. The Sanctuary was opened to U.S. trawlers on what was to have been an "experimental basis" during the process of Americanization of the U.S. 200-mile zone. Unfortunately, the so-called experiment far outlasted the period of Americanization, and the now heavily overcapitalized U.S. groundfish fleet is inflicting serious damage. Existing time and area controls are not adequate to protect the fragile habitat for juvenile crab and the crab themselves.

Question: Are you confident Councils can be actively involved in allocation decisions with the resources currently provided them? Or, do we allow Councils to devote their resources to that process and require NMFS to set overall catch limits?

Answer: The ACC does not take a position on the broad question of whether the Councils should have allocation authority. However, we believe that, in the interest of

fairness in the North Pacific Council, decisions on allocations should be based on a two-thirds vote, rather than on a simple majority. This approach would largely dispose of concerns among many in the Washington-based fishing fleet that the automatic voting majority of the Alaskan Council members leads to discriminatory allocations.

Question: You state that special interest groups have engineered the appropriation of scarce federal dollars for dubious purposes. Would you care to elaborate on this?

Answer: The ACC has been critical of appropriations of funds for research purposes that are directed toward results favored by one interest group or another. The Saltonstall-Kennedy Program and, most recently, Sea Grant have been sources of particular concern in this regard. In addition, significant sums have been diverted to one trade association from the management account of a regional office of the National Marine Fisheries Service. This has had a material adverse impact on the management capabilities of that office, and has, thereby, been detrimental to the public interest.

#### Questions for Magnuson Panel

##### Conservation Efforts

Question: Do the management Councils adequately consider long-term economic and environmental benefits in setting harvest caps and allocations?

Answer: In the North Pacific Council, there is frequently inadequate attention to long-term interests, while focusing on short-term maximum yields and allocations favorable to Alaskan interests. This is a product, largely, of industry pressures, particularly in the case of the trawl groundfish fleet, which is greatly overcapitalized and is constantly seeking increased quotas of target and bycatch species. Bycatch caps are set too high or are non-existent in some cases (i.e., snow crab and chinook and chum salmon), and target species caps do not adequately take into account the enormous discards in the large-scale trawl fisheries. In addition, some scientists tend to take a short-term view, and this results in decisions that are not precautionary. As for allocations, the Council does not adequately encourage selective gear, thus effectively protecting the short-term interests of wasteful large-scale trawl fleets at the expense of the long-term health of the target and non-target species.

Question: Many suggest we need to replace the ad hoc species-specific management approach with one that looks at the entire ecosystem. What are your views on this? Should some organ other than the Councils be responsible for long-term planning?

Answer: In the North Pacific, movement has been made in the direction of multi-species management. With great effort, the ACC has succeeded in persuading the Council in that region to establish bycatch limitations and to account for discards of target species. However, as noted in the answer to the foregoing question, the management actions of the Council have not been sufficient to resolve problems of waste in the fisheries. Multi-species management has considerable distance yet to travel. As regards, long-term planning, there is action underway to bring "comprehensive rationalization" to the groundfish and crab fisheries of the North Pacific. This is a step in the right direction, and it will be important to ensure that the undertaking yields meaningful results.

Question: How should the Magnuson Act be revised to reduce waste and bycatch problems?

Answer: Attached to the prepared testimony of the ACC are specific proposals for amendments to the Magnuson Act for the purpose of ensuring improved conservation, including the reduction of bycatch and discards of target species. These proposals enjoy substantial industry support in the North Pacific region.

Question: Are the management Councils doing a good job in minimizing waste and bycatch, or are they choosing not to exercise such authority?

Answer: The North Pacific Council, as explained above, has made progress in this area. The Council is slowly moving toward weighing all groundfish brought aboard the offshore fleet. This will be a substantial improvement over the present situation. However, there is much left to be done. The prepared statement of the ACC and the newspaper article attached to these questions and answers describe the magnitude of waste that remains in the fisheries. Such waste cannot be tolerated; the Council must respond to this problem effectively.

Question: Do we need to define "overfishing" in the Magnuson Act? And if so, how should we define "overfishing"?

Answer: The ACC believes that overfishing may need to be clearly defined in the Act. It is all-too-evident that overfishing has occurred on a massive scale under the prevailing provisions of the Act, and that, therefore, an amendment to address this problem is in order. The ACC is studying various proposals that would accomplish that purpose.

Question: NMFS reports that 42 percent of 153 species groups are overfished. Does this indicate a "conservation" problem, and if so, how do we address this problem?

Answer: The NMFS report shows that there can be no disputing the existence of a conservation problem. Overfishing on the scale experienced in our fisheries cannot be reconciled with the most basic notions of conservation. The ACC has proposed amendments to the National Standards that would address this problem.

Question: Some suggest that the Councils do not act until a fishery has already been overfished. How serious as a failure do we have with recognizing the need for an FMP before a crisis develops?

Answer: In the North Pacific, the problem has not been so much a lack of recognition of the need for an FMP as a failure to adopt concrete conservation measures that will avert overfishing. Conservation problems in the crab fisheries, which are managed by delegation of federal authority to the State of Alaska, evidence this failure of stewardship of our national, marine resource assets.

Question: Do Councils generally have adequate data to ensure that fishery management plans have a scientifically sound basis? Do Councils take full advantage of this information?

Answer: The data is quite poor in some cases. Unfortunately, in the case of crab in the North Pacific, the State of Alaska fails to dedicate sufficient funding to crab research for effective management. The fact that the State gains many times more in crab-related fees and taxes than it spends on data-gathering and other crab research shows that the problem is not one of lack of funds. Nonetheless, in response to the failure of the State to meet its responsibility to manage a federal resource in reliance on adequate data, the Congress has for the past two years made special appropriations of federal funds for crab research in the region. The ACC is grateful to the Congress for responding to a very serious problem.

Question: How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?

Answer: One way in which this can be accomplished is to volunteer access by scientists to fishing vessels in the normal course of operations, or to make fishing vessels available for dedicated data-gathering trips on a cost-sharing basis. The ACC has encouraged this approach. Indeed, the members of the ACC have expended

considerable funds in promoting research of the crab resource. We are proud of the contribution we have made, and feel that it represents a model for the industry at large.

#### Habitat Protection

Question: Do Councils need more authority to protect habitat on behalf of fishery resources? How might this be accomplished?

Answer: Habitat protection is vitally important. For example, Councils should have clear authority, and direction, to protect critical spawning and nursery habitats from such destructive fishing techniques as hard on bottom trawling. The Act should be amended to make the authority clear for this purpose and to require effective implementation.

Question: How should we amend the Magnuson Act to strengthen habitat protection?

Answer: The ACC is reviewing specific, detailed proposals developed by conservation organizations. However, we have offered draft amendments, of a general nature, to the National Standards to address, among other things, the habitat protection issue.

Question: What additional authority do federal and State fish management agencies need to adequately protect critical fish habitat?

Answer: See answer to previous question.

Question: Should the Councils and NMFS take a stronger, pro-active role in habitat protection, including on-shore issues that might affect marine fisheries?

Answer: Yes. The importance of estuaries and other near-coastal areas to the life-cycles of many marine species is well established. Fisheries management can be frustrated by actions that are detrimental to those spawning and nursery areas. Therefore, the Councils and NMFS should have a definite role to play in federal and State decisions affecting those areas.

Question: Does the Magnuson Act need to be amended to require Councils and NMFS to take a stronger role in habitat protection, and, if so, what are your specific recommendations to accomplish this?

Answer: Yes. The ACC is studying specific proposals, and will make recommendations during the reauthorization process.

#### Funding

Question: Do you have any specific suggestions on implementing funding mechanisms that would be alternatives to federal fishing licenses?

Answer: The ACC feels that the issue of fees must be addressed in the context of the ability of industry to pay (a calculation involving all existing fees, taxes, costs, constraints on resource access, and the like), and the delivery of effective conservation and management. The government must recognize that poor conservation and management can only lead to an economically sick industry, one that cannot support fees. Moreover, the government must understand that the days of demanding something for nothing--money for bureaucrats who do not deliver good government--are finished. The political acceptability of fees--or alternatives to them--will depend, therefore, on the promise of a sound regulatory system. As for alternatives, in-kind contributions of vessel time for research and credit for investments in effective gear modifications to reduce waste and consequent management problems, would seem be worthy of study.



Question: Is it reasonable to say that those who profit from the reduction in overcapacity (i.e., those remaining in the industry) should pay the cost of compensating those driven from the fishery?

Answer: No. Those who have made prudent financial management decisions and who, thereby, are assured of survival, should not be forced to pay for the financial consequences of the poor financial management decisions of others. Success should not be punished, and the economic viability of those who remain in the fisheries should not be threatened by additional, unfairly imposed costs. Moreover, it is difficult to see how Members of Congress could decide who among their constituents will pay and who will be paid.

Question: Please assess the willingness of fishery resource users in the New York-New Jersey area ....

Answer: The ACC has no information on which to base such an assessment.

Question: If additional revenues for marine fisheries conservation and management are necessary and Congress decides that users and others should bear some of the cost, how should those costs be allocated among interested parties.

Answer: Costs should be allocated on a regional basis, and revenues dedicated to the region from which they have been derived. Among those to pay in the region should be harvesters, processors, and marketers, as well as communities that benefit from such programs as "Community Development Quotas". How the burden is allocated among them should be decided in the region, but subject to federal oversight to ensure fairness and equity.

#### Council Membership

Question: Should the selection process for new members of fishery management Councils be modified to ensure a more fair and balanced Council membership? How do you define "fair and balanced" representation?

Answer: The ACC does not take a position at this time as to whether the selection process for Council members should be altered. However, the ACC does believe that allocation departing from patterns of historical participation should be made by a two-thirds, rather than a simple, majority vote. This approach ensures that, in the case of the North Pacific Council, the automatic majority enjoyed by Alaska will not lead to allocation decisions that unfairly favor new entrants, who are residents of Alaska, over historical participants, who are residents of other States. The ACC regards a fair and balanced representation as one that encompasses all major industry groups and does not allow any one State to gain unfair advantage over any other.

Question: It has been suggested that the Council Member from the regional NMFS office should be a non-voting member of a Council and that the regional Fish and Wildlife Service representative should be given a vote. What the merits, if any, of this proposal?

Answer: The ACC does not have a formal position on this issue. However, we note that Regional Directors of NMFS sometimes come from the fishery management agencies of a State. That can lead to bias in favor of the interests of that State and its fisheries managers. This can represent a conflict of interest, insofar as the RD is obligated to make decisions in the national interest. It may be prudent to require the RD to recuse himself from voting on matters that substantially affect the State from whose government he came before becoming a federal official. The ACC does not take a position on whether the FWS representative should have a vote. However, the same logic would apply in that case, as applies in the case of an RD.

Question: The National Marine Fisheries Service has suggested that each State Governor should be required to nominate six rather than "at least three" nominees. Would this improve the functioning of the Councils? Would this change give the Federal Government too great a degree of control over the selection process?

Answer: There is no evidence that the proposal, if adopted, would improve the system. On the contrary, it would appear that the adoption of the proposal would literally double the complexity and burdensomeness of the process.

#### Changes in industry

Question: What sort of policy changes should Congress consider to ensure that the Magnuson Act will more effectively mandate fishery management and conservation in the National interest? Can these changes be made and still protect the interests of sportsmen, commercial fishermen, and consumers?

Answer: The ACC has proposed changes to the National Standards that would improve conservation of the federal fisheries. Adoption of those amendments would clearly lead to more effective conservation in the national interest. In addition, the ACC has proposed a voting process for allocations in the North Pacific that would ensure the management of federal fisheries resources as a national asset, not as an asset of one State which enjoys majority representation on the Council.

Question: It has been suggested that if an FMP leads to the displacement of historic participants, then the federal government should provide some adjustment assistance for those displaced persons. How do we define "historic participants" and what kind of assistance might be appropriate?

Answer: The ACC takes no position on this issue.

#### Conflict of Interest

Question: We have heard a good number of complaints about conflicts-of-interest among Council members. How do you define "conflict of interest"? Please comment on the seriousness of this problem.

Answer: The ACC feels that, with sufficiently strong legal requirements for effective conservation and fair allocation, the conflict of interest problem would cease to be a matter of concern. The reason is that no management measure that allowed excessive fishing to suit one interest group or another represented on the Council would pass legal muster. Likewise, no measure that unfairly advantaged such a group would be approved by the Secretary of Commerce. The fundamental problem is with the standards of management, not the standards of conduct. If conflict of interest rules are changed, that may provide some marginal improvement, but it will not produce the kind of major advances in conservation and management that are badly needed in the public interest.

This is a function of a government of laws, not of men.

#### Council Operations

Question: Some argue that nothing is inherently wrong with the MFCMA, and that the problem is more one of implementation. Do you agree or disagree, and why? If you agree, what should Congress do to improve implementation--additional oversight, adding provisions for citizen suit procedures to the MFCMA, or something else?

Answer: The ACC believes that the large numbers of depressed fish stocks and the massive waste in the fisheries can only exist because the Act is fundamentally flawed. There must be amendments that make it clear that conservation is the first management priority and that overfishing and discard waste will be prohibited. The

Act should be amended in such a way that poor implementation would not lead to the kind of abuse of the public's resources that we experience today. The amendments proposed by the ACC would achieve the needed changes to the Act.

Question: How do you perceive the balance of power between the fishery management Councils and the Secretary of Commerce/NMFS? Should the Secretary of Commerce exercise greater or less authority over the Council process?

Answer: The issue of balance of power, like the issue of conflict of interest, is of secondary importance. The critical point is the need to alter the basic standards of conservation and management to ensure proper stewardship of public resources. If the standards are adequate, the existing authority of the Secretary is sufficient to ensure effective conservation and management. As in many other cases, reorganization is a bureaucratically tempting, but substantively ineffectual, way of resolving fundamental management problems.

Question: If funding for Councils is further reduced, where would cutbacks be directed? What changes in the Magnuson Act might be needed to give Councils more fiscal flexibility to manage under reduced funding?

Answer: Regardless of whether there is reduced funding for the Councils, there must be a realignment of management priorities, so that if some issues are not fully and timely addressed, they are not the ones that relate to conservation of the resources. By establishing conservation as the first priority of the Act, Congress would set the stage for ensuring that the Councils utilize their limited funding to accomplish, at a minimum, the maintenance and restoration of the fish stocks. Additional language to that effect in the section of the Act relating to the responsibilities of the Councils would be helpful, as well.

Question: Do Councils generally have adequate data to ensure that fishery management plans have a scientifically sound basis? Do Councils take full advantage of this information?

Answer: The North Pacific Council can use additional data. However, there is also the issue of how that data is analyzed and applied. Unfortunately, there are substantial blind spots, particularly in the area of bycatch waste. For example, "unobserved crab bycatch", the bycatch that occurs by contact of bottom trawl nets with crab, is thought to amount to ten or more times mortality than that which results from bycatch observed in the nets. With adequate research, this could be established with sufficient precision to permit a management response that would better protect the crab and thus reduce mortality waste.

Question: The 1990 MFCMA amendments removed highly migratory species management from Council jurisdiction....

Answer: This is not a subject concerning which the ACC has expertise.

Question: Some talk about a lack of Secretarial oversight of the fisheries management process, is this changing under Secretary Brown?

Answer: It does appear that Secretarial oversight is increasing. However, it is too early to determine whether this will have substantially and consistently positive effects. Oversight of a weak conservation regime can be of only limited efficacy. Again, the Act needs to be strengthened in the conservation area, and this will give Secretarial oversight greater effectiveness.

Question: Please address the appropriateness of gathering data through logbook entries.

Answer: In the Bering Sea crab fisheries, the ACC started a logbook program for sampling prerecruit juvenile and female crabs. This could have been very helpful as a supplement to the annual surveys. However, the program was never implemented by the Alaska Department of Fish and Game, despite the obvious benefits of receiving the additional data.

It is clear that observer data also is critically important, indeed indispensable, to effective conservation and management, in the high intensity fisheries.

Question: Could the process for developing an FMP be streamlined while still assuring a quality plan?

Answer: The problem in the North Pacific is the time required to gain final Council action on a plan amendment, review by the Secretary, and implementation. We have found that the Council can take three-to-five years to complete the process of developing, reviewing, and approving a new management scheme. Then, the Secretary consumes the full six-month period allowed for review. Finally, OMB takes as much time as it likes to approve the proposed implementing regulations for publication as final rules. In the meantime, the problems of the fisheries escalate. There is a need to streamline the process at all three levels.



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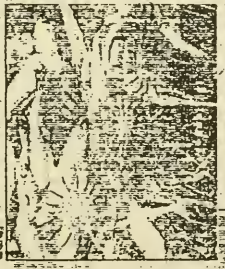
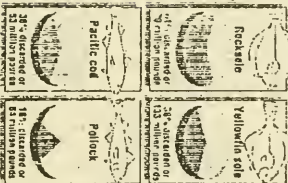
## Bering fishery throws 61% back

### Reports by captains, observers document 'disgrace' in bottom fisheries off Alaska

#### Alaska groundfish industry discards

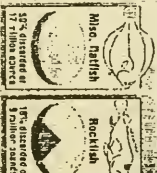
##### Bering Sea

Most wasteful fisheries in Bering Sea and Aleutians



##### Gulf of Alaska

Most wasteful fisheries in Gulf of Alaska



By HAL BENNTON  
Daily News Services Staff Writer

The most wasteful fishery in the world, according to a report by the bottom of the Bering Sea. A fleet of more than 35 trawlers dump huge nets across the bottom of the sea, pulling up dead and dying fish, including pollock, yellowfin sole, and other fish.

But most of the fish they bring up are the wrong sex or species. Dead and dying fish are thrown overboard. Mile-long piles of yellowfin sole, pollock, cod and other fish.

From a total 1992 harvest of 1.1 million pounds, 100,000 of the haul — was dumped, according to the 1992 log-books kept by skippers. It is estimated that 15 million pounds of fish were thrown away.

Larry Carter, an Alaska fishery consultant who wrote a report on fish dumping in the Bering Sea last year, says you can tell the fish are dead by the way they look. Carter's report — submitted to the state Department of Fish and Game — offers the most detailed analysis of the Bering Sea's bottom fishery, the bottom fish harvest off Alaska's coast.

Please see Back Page WASTED

A16 Anchorage Daily News Sunday, October 17, 1993

# WASTED: 70 million pounds of fish in the Bering Sea

Continued from Page A-1

Fishermen dumped 507 million pounds of bottom fish off the Bering Sea coast in 1992, according to a new report reviewed by *Crabbers*.

But the skipper's report to be greatly underestimated. A second set of estimates of the waste, obtained from the industry, shows more than 700 million pounds of fish, or more than twice the amount reported by the skipper.

Based on those estimates, the industry dumped at least 650 million pounds of fish, or more than twice the amount reported by the skipper.

The report says that the waste was dumped in the Bering Sea, off the coast of Alaska, and that the waste was dumped in the Bering Sea, off the coast of Alaska, and that the waste was dumped in the Bering Sea, off the coast of Alaska.

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| BYCATCH                    |                    |
|----------------------------|--------------------|
| Polybutylene Terephthalate | Amount             |
| Species                    | Amount             |
| Haddock                    | 100,000 lbs        |
| Salmon                     | 100,000 lbs        |
| Crab                       | 20 million animals |
| Trout                      | 1 million lbs      |

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## THE BACK PAGE

reports to document the waste.

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hook-and-line fleet — fishing with thousands of baited hooks attached to lines set on the bottom — pulled in the most wasteful harvest.

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ties to slow down and avoid taking the wrong kinds of fish. The rule might prompt fishermen to abandon, some of the most wasteful harvest.

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a new system in which each fishing boat or company would have its own quota for pollock, cod, crab and other species, and could trade those quotas at their discretion.

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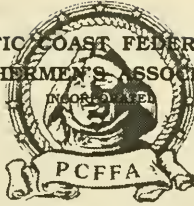
*Pietro Parravano*  
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**PACIFIC COAST FEDERATION  
of FISHERMEN'S ASSOCIATIONS**



*W. F. "Zeke" Grader, Jr.*  
Executive Director

*Nathaniel S. Bingham*  
Habitat Director

*Glen H. Spain*  
Northwest Director

*Much Farro*  
Director of Enhancement  
Projects

**Please reply to:**

**Main Office**

[ ] P.O. Box 989  
Sausalito, CA 94966  
Tel: (415) 332-3080  
FAX: (415) 331-2722

**Office of the President**

[ ] P.O. Box 340  
El Granada, CA 94018  
Tel: (415) 726-1607  
FAX: (415) 726-1607 - 3\*

**Habitat Office**

[ ] P.O. Box 783  
Menoceros, CA 95460  
Tel: (707) 937-4145  
FAX: (707) 937-2617

**Northwest Office**

[ ] P.O. Box 11170  
Eugene, OR 97440-3370  
Tel: (503) 689-2000  
FAX: (503) 689-2500

Statement of W.F. "Zeke" Grader, Jr.  
Executive Director  
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
to the

HOUSE SUBCOMMITTEE ON FISHERIES MANAGEMENT

Regarding H.R. 780 and the Reauthorization of the  
MAGNUSON FISHERY CONSERVATION & MANAGEMENT ACT

Washington, D.C.  
29 September 1993

STEWARDS OF THE FISHERIES

## STATEMENT OF W.F. "ZEKE" GRADER, JR.

MAGNUSON ACT REAUTHORIZATION HEARING - 29 September 1993

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to testify here today on the reauthorization of the Magnuson Fishery Conservation & Management Act and your bill, H.R.780. My name is Zeke Grader and I am the executive director of the Pacific Coast Federation of Fishermen's Associations (PCFFA). Our federation, representing working men and women in the west coast fishing fleet, is made up of 26 member associations and is the largest commercial fishing organization, outside of Alaska, on the U.S. Pacific Coast.

PCFFA's history is closely tied to that of the Magnuson Act. We were organized shortly before the passage of H.R. 200 in 1976. A number of our member port marketing associations in Northern California (the organizers of PCFFA) had been actively pushing for U.S. extended fishery jurisdiction for some years before, along with groups from Alaska, New England and the Pacific Northwest, in an effort to regulate or eliminate the large foreign fishing fleets then operating off the U.S. coasts. Despite denials by some government agencies, fishermen feared these fleets were overfishing, or would overfish, important stocks. Indeed, the first bill in the Congress to extend U.S. fisheries jurisdiction was introduced by a Northern Californian, then-Congressman Don Clausen.

In 1975 trollers and trawlers and fish processors from Northern California convinced another Northern California Congressman, Robert Leggett, then chairman of the Subcommittee on Fisheries & Wildlife Conservation & the Environment, of the need to extend U.S. fishery jurisdiction. Mr. Leggett's support as subcommittee chairman was critical to getting Mr. Studds' bill, H.R. 200, out of committee and passed by the House.

PCFFA is intimately familiar as well with the working of the Magnuson Act. A former vice-president of PCFFA served two terms on the Pacific Council, and other officers of our organization, including myself, have served since 1976 on various advisory subpanels and committees of the PFMC. We have participated in most of the reauthorizations of the Act, providing testimony or drafting amendment language. We worked closely, for example, with the National Wildlife Federation, in developing amendment language requiring that regional council members have some expertise in fisheries and authorizing regional councils to comment on habitat issues affecting fisheries under their fishery management plans.

Our biggest disappointment with Magnuson, and a major flaw in the Act, has been its lack of jurisdiction over fish habitat which is critical to the health of many of this nation's marine and anadromous fishery resources. Mr. Chairman, in the testimony today



I want to emphasize the absolute importance of Congress, in this reauthorization, extending regional council jurisdiction to fish habitat. I then will touch briefly on some other issues that have been raised regarding Magnuson amendments this session.

#### EXTENDING JURISDICTION OVER FISHERY HABITAT

Our reading of the Magnuson Act, following its passage in 1976, was that the regional councils' did, in fact, have management authority over fish "throughout their range". Based on our experience with salmon, it was clear that to conserve and manage these runs successfully, "gravel-to-gravel" authority was required. Not only PCFFA, but members of the Salmon Advisory Subpanel, argued too for gravel-to-gravel authority recognizing that in-river and estuarine habitat losses were affecting the populations of numerous salmon runs along the Pacific Coast. Various sections of the original Act were cited supporting an interpretation that fishery management plans, at least for salmon, were to include habitat factors, as well as harvest, in the management of the runs. These included (emphasis added):

(1) to take immediate action to conserve and manage the fishery resources found off the coast of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing .....exclusive fishery management authority **beyond such zone over such anadromous species and Continental Shelf fishery resources.....** 16 USC 1801(b)(1)(B).

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.....16 USC 1802(a)(9).

The United States shall exercise fishery management authority, in the manner provided in this Act, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone.....16 USC 1812.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.....16 USC 1851 (a)(3).

What followed, however, is that the states, more concerned with turf than fish it seemed, cited Section 306 (16 USC 1856),

claiming the councils had no authority within state waters. Pressure was brought to bear, including from some of its own members, to restrict Pacific Council "management" from the beach to 200 miles and solely to the harvest of species falling under a fishery management plan. What was called fishery management became, in fact, user management -- or, more correctly, regulation of fishermen. The rest is history.

The pleas made by our organization, beginning in 1977, to consider habitat factors in the management of salmon were ignored. Regulations governing the ocean salmon fishery each year became more severe. Despite the increasing severity of these regulations, the resource did not respond. This was no surprise to us. The hydropower operations on the Columbia, land use practices in coastal watersheds, two droughts and an increase in water diversions were all having an impact. And, it was also obvious that when habitat conditions improved, as happened during the wet years of 1984, 1985, 1986 (following the severe El Nino of 1982-83), the fish responded positively. In California, for example, the troll chinook harvest was a record 14 million pounds in 1988; that was coupled with an excellent sport harvest and good spawning escapement.

We are pleased that habitat is finally viewed as a factor affecting fish populations; this is recognized by NMFS, the Pacific Council, and some other regional councils as well. It is also widely recognized among fishing organizations across the nation. In recent weeks as fishing, conservation and labor organizations have sought the appointment by the Administration of an individual outside of NMFS, with fishery science and management credentials, to head the nation's fishery agency, I was struck by the number of individuals -- in New England, on the Gulf Coast, and in Alaska -- who feel habitat protection has to be a major focus of fishery management (see Attachment #2). NMFS, too, in a 22 February 1993 draft proposal for amending the Magnuson Act recognizes the need for strengthened protection for fishery habitat:

The single greatest long-term threat to fisheries productivity is the continuing degradation of fisheries habitat. Coastal, estuarine, and riverine habitats essential to most of the valuable fisheries species continue to be degraded and lost as a result of contaminants, freshwater flow diversion, physical habitat alteration (e.g., dredging and filling), and nutrient overenrichment. Present authority under the Magnuson Act and the Clean Water Act extends only to making recommendations to the deciding government agency, and many such recommendations are ignored, to the detriment of U.S. fisheries.....an amendment that would require an FMP, where appropriate, to designate habitat essential to achieving optimum yield of a species or species complex [is needed]. The designation would include important

areas, and specifications of physical and chemical conditions that must be maintained, and would require consultations by project proponents with NMFS on the projects's impact on FMP species. The process could be similar to a Section 7 consultation under the Endangered Species Act, with consultations based on specific criteria for achieving and sustaining an acceptable level of habitat recovery.

#### HABITAT PROBLEMS AND COUNCIL MANAGEMENT

The management measures proposed by the Council for the 1992 ocean salmon fisheries are responsive to the currently depressed levels of several key salmon stocks and to apparently poor ocean survival in recent years, including as yet unknown impacts from another El Nino this year. The continued reduction in abundance of important natural salmon stocks, despite severe harvest reductions in past years, emphasizes the critical need to protect, restore and enhance freshwater salmon habitat within all the Pacific coast states and Idaho.

The need for habitat protection and restoration is especially critical for the Klamath-Trinity River basin which has been such an important producer for ocean fisheries and which has been severely impacted by the prolonged drought and unfavorable water management decisions. Improved freshwater survival and production of Oregon coastal natural coho and natural coho stocks in Puget Sound and along the Washington coast are also key elements in restoring long-term social and economic stability to ocean fisheries. While generally small contributors to ocean harvests, the recovery of stocks currently under Endangered Species Act consideration and prevention of any further listings is an equally important priority.

The Council is acutely aware of the habitat problems of anadromous fish and their role in the decline of numerous salmon stocks. As the productive base of the stocks has been eroded, they have become more susceptible to harm from harvest impacts and seasons have had to be reduced. In most cases, fishing is not the primary cause of the decline, but if left unchecked could further damage the resource. The extremely abundant spawning escapements of Klamath River fall chinook in 1986, 1987 and 1988 did not result in continued high productivity from the system. Now, even with no fishing on Klamath River fall chinook we cannot expect to see consistent improvement in production unless the habitat problems are resolved.

Comprehensive watershed restoration projects are needed that address all sources of fish mortality. The state and federal fishery agencies and the tribes are working on many fronts to rebuild the stocks. The Council and its Habitat Committee are committed to assist the agencies and fishery groups in this process to the best of their ability under the limited authority provided by the Magnuson Fishery Conservation and Management Act. This authority does not extend to direct intervention in habitat matters, but is limited primarily to providing comments to state and federal agencies whose actions may affect fish habitat. While limited, the Habitat Committee believes the Council's role can be effective and is working on ways to increase this effectiveness.

Pacific Fishery Management Council Newsletter, 17 April 1992.

In fact, the only effective statute currently available for protecting fish habitat, is the Endangered Species Act. But that only kicks-in when a run or species is found to be on the verge of

extinction. At a 7 July field hearing earlier this year in Woodland, California, Nat Bingham, PCFFA's Habitat Director, told the full Merchant Marine & Fisheries Committee:

As society ignores environmental warning signs -- no matter how clear and compelling they may be -- and fish stocks decline, fish conservation efforts inevitably begin by suppressing the fisheries and wounding the community economies dependent upon them. The ESA's forceful and unambiguous language -- rare among acts of Congress -- makes it as the only current law, unfortunately, capable of arresting and reversing the decline of fish and other environmental resources. Most other laws tolerate endless "coordination and cooperation" lip service and continued environmental decay and economic degradation. (see also Bingham's testimony to the American Fisheries Society, Attachment 1).

PCFFA believes that it is time for more than lip service about conserving and managing our nation's fisheries. Under Magnuson, the regional councils and Commerce were empowered to regulate and phase-out foreign fishing; they were empowered to regulate domestic fishermen. But they have been powerless to deal with the loss of fish habitat. If this nation truly seeks to conserve and manage its fish and shellfish resources -- and the livelihoods of fishermen depend upon its ability to do so -- than fisheries jurisdiction must be extended to fish habitat.

Extending fishery jurisdiction to fish habitat should be neither onerous, nor burdensome, nor costly. Providing the regional councils, acting through NMFS, with the same type of consultive authority presently afforded agencies charged with species recovery under Section 7 of the Endangered Species Act, would be an important first step in protecting fish habitat and making the Magnuson Act an effective instrument for fishery conservation and management.

Mr. Chairman, I would now like to turn my attention to some of the issues raised by others during this reauthorization round.

#### BY-CATCH -- IT'S EVERYONE'S PROBLEM

As more and more fish stocks and marine life come under increasing pressure, additional effort must be made to reduce or eliminate the take in fisheries of non-targeted animals, including undersized fish, fish species that are protected or to be discarded, marine mammals, seabirds and reptiles. Unfortunately there is no perfect fishing gear in either the commercial or recreational fishery. Depending on where and how it is used, a piece of fishing gear may be extremely "clean" or very "dirty" -- it doesn't matter if it is a trap, a purse seine, a gillnet, a trawl net, longlines, troll lines or hook-and-line.



The problem is not simply with the highly publicized takes of porpoise in purse seines in the Eastern Tropical Pacific, or turtles in shrimp trawls, or salmon in high seas drift nets. There is also, for example, a large take of undersized rockfish in the recreational hook-and-line fishery that are discarded dead, as there is a problem with the take of natural spawning spring-run salmon, a species at risk, in the Klamath River tribal gillnet fishery.

Sometimes the solutions are relatively simple, such as the adoption of barbless hooks in the ocean commercial and sport salmon fishery to reduce hooking mortality of undersized fish. There are currently experiments being conducted with different mesh configurations for trawl nets aimed at further reducing the take of undersized fish. In other instances, however, the problem may be far greater requiring either an extensive modification of existing gear or utilizing a different piece of gear altogether. In any event, research and development -- not finger pointing -- is needed to assist fishermen, whether sport or commercial, in the effort to find fishing gear or fishing methods that will reduce the problem, where it exists, of by-catch.

PCFFA has no position on whether an amendment is needed to the Magnuson Act to address the by-catch issue other than, perhaps, policy language directing the regional council's within their fishery management plans and amendments to strive for a greater reduction of by-catch. Most importantly, Congress can redirect funds, such as Saltonstall-Kennedy Act, to provide the monies needed for research and development by fishermen to modify or change gear to reduce or eliminate by-catches.

#### MONITORING AND ENFORCEMENT

PCFFA does not argue that monitoring and enforcement in many fisheries cannot be improved, but questions whether this is an issue for amending the Magnuson Act or, more properly, a matter to be taken up in appropriations.

The problem, as always, with additional biological monitoring or law enforcement is finding the funds. There are numerous examples where better enforcement or monitoring would be great if either the funds were available or the agency was committed. For instance, we have serious concerns with the reporting -- or underreporting -- of salmon catches for the in-river fishery on the Klamath.

One of the most effective means of monitoring and enforcement and one that has certainly worked on the west coast is state licensing of both commercial fishermen and recreational anglers. This coupled with catch reporting requirements, has allowed the four west coast states to do a good job, compared to many other

areas of the country, of enforcing fishery regulations while collecting valuable landing data. PCFFA suggests Congress provide incentives for those states that currently do not license fishermen and fishing craft to begin a licensing program to better assist monitoring and enforcement of catches.

#### CONSERVATION OF LARGE PELAGIC SPECIES

Since 1980, PCFFA has been involved in the development of state legislation and regulations governing the take of swordfish and shark. These statutes and regulations have, for the most part, been successful in protecting these species. This past year PCFFA drafted the California legislation, supported by the Center for Marine Conservation, placing a moratorium on the take of White Sharks. This legislation we felt important to both protect this species of shark and maintain a balance in the marine ecosystem by ensuring an adequate number of these top of the food chain predators. The point to this is that large pelagics are not in trouble, as some would claim, in all areas of the country. Nor is it true that commercial fishermen and others are not working to protect them.

If any amendments are proposed to Magnuson regarding large pelagics, it is important the language reflect that not all populations are in trouble or require federal action and, to the extent there are problem areas, the conservation burden for the protection of these fish must be shared equally by all user groups.

#### CONFLICT OF INTEREST - THE REAL CONFLICT

The charges of conflict of interest against members of some of the regional councils threatens the credibility of all the councils. From the information we have seen, the most serious charge involved a decision made by the North Pacific Council where, frankly, whatever way the council would have voted on that issue, there would have been a charge of conflict of interest. Whether or not there was a real conflict of interest involved in that decision, just the perception of a conflict of interest by council members presents a problem. The answer it seems to us, however, is not to eliminate everyone with a conflict of interest because, in fact, everyone who is interested and knowledgeable will have a potential conflict of interest. Rather, the existing regulations on conflict of interest need to be vigorously adhered to and where any council member has any potential for economic gain, including maintaining their job working for an organization, they should be required to make such a disclosure at the time of voting.

It is important to remember that fishermen and processors are not the only ones voting who potentially have a conflict. Indeed, I have witnessed votes where a fisherman or processor voted favorably on motions adverse to their immediate economic interests.

Remember, every state director has a potential conflict of interest, particularly where a council vote adverse to a Governor's policy could mean the loss of a job for that director.

Sportfishing representatives have potential conflicts of interests. If a council member works for a sportfishing organization, they must vote that group's position or risk losing their job. Likewise, there are council members who have sportfishing businesses that stand to gain economically from their vote. Finally, even if there is no direct financial reward, there is a value to be attached to a vote that means a greater sportfishing opportunity for a council member.

Environmental representatives, too, have potential conflicts of interest. If a council member is a paid staffer or officer of an organization, their job is on the line on many votes. Council members representing tribal fisheries are not free from potential conflicts of interests, nor are academics members of regional councils devoid of conflict of interest charges where a vote may mean a new study, grant or contract.

Who then should serve? Even a disinterested undertaker potentially has a conflict of interest when voting on fishing seasons. Eliminating the councils, however, is no answer. The councils are an important mechanism for providing the public access to the decision making. Centralizing fishery decisions in Washington means only those wealthy groups with Washington lobbyists and the funds for a full-time Washington office will have access to the system. And those suggesting a "Commerce Czar" to make fishery decisions are obviously ignorant of history and of a sick, corrupt, despotic system.

The answer to us, as I said at the beginning of this discussion, is to ensure existing conflict of interest regulations are carefully adhered to and council members disclose before voting on any motion where they may benefit personally.

The real conflict of interest that has not been discussed in this reauthorization round is that which exists currently regarding regional council reliance for legal advice on the NOAA General Counsel's office. Those of you on this subcommittee who are attorneys are familiar with the canons of ethics regarding attorney conflict of interest. Yet our regional councils are basically stuck with attorneys who have a conflict of interest; that is, the legal staff NOAA provides them. Even though there is no explicit prohibition against a regional council hiring its own legal counsel (see Attachment #3 - NOAA General Counsel Opinion No. 63), funding is not provided the regional councils to hire such staff. This means then that the councils are not independent decision makers, but subservient to Commerce since they must rely on the legal advice given them by NOAA lawyers.

No where was the conflict more blatant than this year. Following the Secretarial override of the Pacific Council's 1993 salmon season, the PFMC met to decide whether to buckle under to Commerce's decision or voice their disapproval. The problem was their legal counsel was an employee of the Secretary, advising them to go along. They refused, but were hamstrung in their decision by not having their own counsel to advise them of various options available to them. A few months later, the Pacific Council's same assigned NOAA lawyer was in court with two other federal attorneys defending the Secretarial decision to override the Pacific Council. If private attorneys engaged in such conduct they would be disbarred.

If the regional councils are to be empowered to make the very best decisions possible, they not only have to have the best scientific minds available, they must have access to legal counsel loyal to them. PCFFA recommends that the Magnuson Act be amended to explicitly direct each regional council to hire its own legal counsel. Funds for this additional staff can be provided by re-programming part of the NOAA General Counsel's budget to the regional councils.

#### "OVERFISHING" OR IS IT MISMANAGEMENT?

There have been charges flying around about widespread "overfishing" and blaming the current system for the problem. While there are, admittedly, some instances where stocks have been overfished under the Magnuson Act, this appears to be more the exception than the rule. In some instances, from what we have seen, stocks were overfished because of inadequate or faulty data was relied on. In other instances, habitat degradation has caused stock declines necessitating further reductions in harvest levels. In any event, admonitions against overfishing have been in the Magnuson Act since its passage in 1976. The problem then, to the extent it exists, appears to be enforcement of the Act, not a need for more amendments.

Although the decline of Pacific salmon has not been the result of overfishing, fishermen have, nevertheless, had drastic restrictions placed on them in order to protect remaining stocks. I bring this to your attention not to suggest an amendment to Magnuson, but to make the subcommittee aware of the need to look at innovative new programs to permit fishing while still rebuilding those stocks currently at risk or listed. Personally, I believe this could be achieved by universal marking of all hatchery fish. Commercial, sport and tribal fisheries could then target on the marked hatchery fish which can withstand a much higher harvest level. Avoiding or restricting the harvest of wild stocks, by targeting hatchery fish, will provide these weak stocks an opportunity to rebuild, provided there is habitat improvement. As their numbers increase a larger harvest on them can then be permitted. An federal expenditure of funds will be needed, but this investment is cheap compared to the



economic losses that will result, and have resulted, from total closures to protect weak stocks.

The bigger problem facing our fisheries today is not "overfishing", but rather mismanagement. On the Pacific Coast we have witnessed two glaring examples of gross mismanagement this year alone.

The first involved a decision by the Secretary of Commerce, following discussions with the Secretary of Interior, to arbitrarily overrule the Pacific Council's adopted 1993 salmon season. The two Secretaries, meeting in a back room without benefit of public review and without reviewing the public record, decided to make their own season. This was done, we believe, in violation of the Magnuson Act since the Commerce Secretary, among other things, failed to place in the public record the basis for his "emergency" override of the Pacific Council. And, because the decision also involved the allocation of fish on the Klamath River, it violated the Klamath Basin Act, P.L. 99-552.

In 1986, Congress created the Klamath Fishery Management Council (KFMC), by passing the Klamath Act, to recommend the allocation of the fishery resources of this river system; it did not delegate that authority to either the Secretary of Interior or the Secretary of Commerce. Since none of the four tribes of the Klamath Basin -- the Hupas, the Karoks, the Klamaths and the Yuroks -- have a treaty, there was no mechanism under Magnuson for allocating them a share of the Klamath salmon. The Klamath Act provided the allocation mechanism through the KFMC. The Klamath Council includes, among others, representatives of the Department of Interior and two of the four tribes (Hupas and Yuroks).

This spring the Klamath Council made its recommendations to the Pacific Council, with no dissenting votes, and the Pacific Council then adopted one of those recommendations. But the two Secretaries decided thereafter, by fiat, to overrule the Pacific Council, upping the in-river allocation and increasing spawning escapement. Unlike the rest of us, the Secretaries, apparently, do not have to play by the rules.

What was particularly troubling to us about this flaunting of the Magnuson Act was that the Secretarial decision to increase spawning will do little to help the resource.

The salmon runs of the Klamath Basin have been decimated by Department of Interior reclamation projects on both the mainstem Klamath, and the Trinity. The Department of Interior's operations have violated their trust responsibilities to the tribes of that basin, as well as violating their public trust responsibilities to the fish and wildlife resources of the river.

From the records of the past dozen years, it is obvious that

the salmon respond to habitat conditions. Even poor spawning escapements have produced large runs when there have been wet years and large releases of water into the river from the reservoirs. Interior's operations have dewatered much of the basin. On the Trinity side, for example, the Bureau of Reclamation was diverting as much 86% of the flow. Finally, in 1980, following demands from local officials, California Trout, the Hoopa Valley Business Council and PCFFA, Interior implemented "study flows" increasing the amount of water released from Trinity Dam to about one-third of the river's historic flow. The study flows have, in the years the Bureau provided them, helped somewhat and last year Congress made those permanent. No such action, however, has been taken on the mainstem Klamath where poor flows and water quality continue to be a problem. The flows into the mainstem of the Klamath during the past few years have not even met the minimum required by the Federal Energy Regulatory Commission for release from Irongate Dam.

Yet this year the Secretary of Interior demanded more fish for spawning without simultaneously agreeing to increase flow releases from the Bureau of Reclamation's reservoirs into the basin. The Secretarial decision cost ocean fishermen between 89,000 and 122,000 fish to get an additional 5100 fish into the river without any finding that there would be the flows, that is, the releases, to ensure successful spawning of the additional escapement or the survival of their progeny.

Not only has the agency mismanaged the fishery, it has failed to protect the fish. The second example of gross mismanagement began in February of this year when NMFS began its Section 7 consultations with the operators of the Federal Columbia River Power System (FCRPS) for the protection of listed Snake River chinook and sockeye salmon. Despite promising its Biological Opinion on the dam operations prior to the downstream migration of the juvenile salmon, NMFS delayed issuing its opinion until 17 May, after 90 percent of the fish had started downstream. And, despite a recommendation by its own biologists for a "jeopardy" opinion, NMFS Northwest Regional Director overruled his biologists and issued a "no jeopardy" opinion. And, because of the delay in issuing the opinion, it was too late for fishery groups to sue for the protection of the fish.

The "no jeopardy" opinion was issued despite the findings in the Biological Opinion that the FCRPS will kill between 55 to 77 percent of juvenile and 33 to 41 percent of adult Snake River spring/summer chinook, and 81 to 93 percent of juvenile and 41 percent of adult Snake River fall chinook salmon. It also concluded that the FCRPS will take 55 to 77 percent of juvenile and 8 percent of adult Snake River sockeye salmon. But despite the finding that these operations will result in a massive kill of these threatened and endangered runs, the Northwest Regional Director made a "no jeopardy" decision! This same NMFS RD was telling fishermen, however, that they would be faced with restric-

tions to protect these runs.

Mr. Chairman, fishermen do not object to doing their fair share to protect and conserve fish, but they cannot do everyone else's part, particularly not that of the FCRPS operators. Idaho Governor Cecil Andrus described the situation best, saying:

Bad politics outweighed science in this biological opinion. The downstream utilities and their customers called in their markers to keep from changing business as usual to help a fish -- even the salmon, whose presence in our waters helps to define the Pacific Northwest.

What happened this year with the Biological Opinion on the Columbia and the overruling of the Pacific Council was not over-fishing, it was mismanagement, it was bad management. That bad management was from the Commerce Secretary down to a Regional Director. How can we possibly expect to conserve and management our fisheries when the agency in charge lacks the guts to stand up for either the fish or fishermen?

#### CONCLUSION

In conclusion let me just return to our main point. The one major deficiency in Magnuson is its lack of authority over fish habitat. An amendment to H.R. 780, extending Magnuson Act jurisdiction to include fish habitat, is critical. Correcting this deficiency would then at least provide the nation the statutory authority to effectively conserve and manage its fishery resources. The rest is up to you as members of Congress, those of us in the fisheries and the public to threaten, cajole or sue the agencies to ensure they carry out the mandate we have given them.

Thank you again for this opportunity to testify. I would be happy to answer any questions members may have.

**Pietro Parravano**  
President

**David Allen**  
Vice-President

**John Greenville**  
Secretary

**Don Sberer**  
Treasurer

**PACIFIC COAST FEDERATION  
of FISHERMEN'S ASSOCIATIONS**



**W.F. "Zeke" Grader, Jr.**  
Executive Director

**Nathaniel S. Bingham**  
Habitat Director

**Glen H. Spain**  
Northwest Regional Director

**Mitch Farro**  
Director of Enhancement  
Projects

**Please reply to:**

**Main Office**  
✓ P.O. Box 989  
Sausalito, CA 94966  
Tel: (415) 332-5080  
Fax: (415) 331-2722

**Office of the President**  
[] P.O. Box 340  
El Granada, CA 94018  
Tel: (415) 726-1607  
Fax: (415) 726-1607-3\*

**Habitat Office**  
[] P.O. Box 783  
Mendocino, CA 95460  
Tel: (707) 937-4145  
Fax: (707) 937-2617

**Northwest Regional Office**  
[] P.O. Box 11170  
Eugene, OR 97440-3370  
Tel: (503) 689-2000  
Fax: (503) 689-2500

28 October 1993

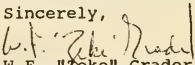
The Honorable Thomas J. Manton  
Chairman  
Subcommittee on Fisheries Management  
1334 Longworth House Office Building  
Washington, D.C. 20515

RE: Response to Magnuson Act Questions

Dear Chairman Manton:

Enclosed is a copy of my response to the written questions mailed to me by the Subcommittee, following your 29 September hearing on the reauthorization of the Magnuson Fishery Conservation & Management Act. As per the Subcommittee's request the responses are submitted on legal paper (8.5" x 14"). If members of the Subcommittee or staff need further information, or have questions, please do not hesitate to have them contact me.

Thank you again for the opportunity to present my organization's and my own views on the reauthorization of the Magnuson Act.

Sincerely,  
  
W.F. "Zeke" Grader, Jr.  
Executive Director

WFG:rtd

enclosures

cc: Honorable Dan Hamburg



STEWARDS OF THE FISHERIES

RESPONSE OF ZEKE GRADER TO QUESTIONS POSED TO  
THE MAGNUSON PANEL  
BY THE FISHERIES SUBCOMMITTEE

Conservation Efforts

- The Management Councils tend to react to immediate problems -- "crisis management" -- and do not, as a result, adequately consider long term benefits or impacts. Part of this problem is a demand for immediate results from constituents -- commercial and recreational fishing and environmental interests -- as well as not being adequately staffed to give proper consideration to long term measures.

- Many of the FMPs are, in fact, for groups of fish, not single species, (e.g., Pacific Coast groundfish plan and the developing pelagic plan). Obviously, some coordination between plans may be needed where fish are sharing the same ecosystem. The biggest problem, however, is that the council's presently cannot do much more than address fish harvests. Thus offshore exploration (e.g., oil drilling and mining) as well as other activities (e.g., at-sea discharges of pollutants, dredging around ship wrecks for artifacts) that may be damaging marine fish habitat, or the species directly, are not being regulated pursuant to or consistent with a fishery management plan whether it be single species or multi-species.

- To address the waste and bycatch problem, the first thing that needs to be done is adequately define the terms. In some instances, for example, discard rates are so low they do not constitute a problem. In other fisheries the harvest of non-target species is not a bycatch problem where the take of the non-target species is sufficiently small as to not impact the stock population and the method of take results in a high-value and readily marketable product (e.g., take of rockfish in the troll fishery). First, the definition(s) must include the non-targeted take of fish in one fishery that may adversely impact another fishery (e.g., trawl bycatch of salmon in the Pacific Whiting fishery and its potential impact on the troll salmon fishery). Second, that waste or bycatch defined as being harmful should be discouraged in broad policy language within the act. Third, long-term goals should be set in fishery management plans where there is agreement that waste or bycatch is a problem in that fishery or with a particular type of gear. Finally, outside of the Magnuson Act, but to aid its implementation, Congress needs to reallocate a portion of Saltonstall-Kennedy Act grants to fishermen/fishing industry, both commercial and sport, for the development of new, or substitution for, gear or catch methods designed to reduce or eliminate, if possible, waste and bycatch.

- The Councils have not really addressed waste and bycatch, although it is discussed, because of either (1) lack of agreement on what constitutes waste and/or bycatch, (2) lack of agreement on impact, or (3) concern over the affects on a fishery if measures to reduce or eliminate bycatch are implemented.

- Overfishing does not need to be defined in Magnuson. The problem with trying to make one definition fit all species is that (1) information on a stock size may not be adequate to define what the excessive fishing effort is, (2) there are wide variabilities in stock size depending on natural occurrences that could make a fixed definition of "overfishing" unwieldy, and, finally, (3) due to habitat degradation many stocks are depressed making severe harvest restrictions necessary until such time as the habitat can be recovered; but the fishing effort is not itself "overfishing", nor did "overfishing" cause the problem. There are currently regulations implemented by NMFS requiring the regional councils to define "overfishing" in each FMP; these regulations should be given an opportunity to work before an attempt is made to define "overfishing" in the Act. Further, since MSY and OY are defined in the Act, is it really necessary to try to develop a statutory definition of "overfishing" applicable to all fisheries or species?



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- The NMFS report of the number of species groups "overfished" or fully fished is somewhat misleading. The key question is how many of those "overfished" stocks are under FMPs? If there are a large number of specie groups under FMPs (i.e., those fisheries under the Magnuson Act) that are considered "overfished" and there are no measures/plans under that FMP for addressing harvest pressure then there is a problem. Absent that, however, the focus of attention on "overfishing" really needs to be directed at those stocks subject to regulation by the states or whose fishery is unregulated.

- The Magnuson Act presently directs regional councils to develop plans to prevent overfishing. There are a number of fisheries for which plans could be developed but the regional councils' simply lack funds and personnel to develop them; this situation exists whether a stock is faced with overfishing or some other problem. Ideally, more of NMFS budget could be reprogrammed to provide the regional councils greater staff and funding to develop plans in a timely manner to avert potential problems in the future.

- My experience has primarily been with the Pacific Council. Part of its problem is inadequate stock information; some of the groundfish species, for example. An even larger problem, however, has been a conscious decision on the part of some of its "scientists" to ignore relevant data. I have watched its Salmon Technical Team as well as some members of its Scientific & Statistical Committee refuse to consider information, such as streamflows, in-river habitat conditions, data from satellites on ocean temperatures and upwellings -- all critical to determining stock health and abundance. These individuals have been trained to look solely at spawning escapement and catch and tag data and appear incapable of expanding their understanding of the fish to the detriment of both the stocks and fishermen.

- Commercial and sport fishermen can contribute significantly to the collection of fishery data, and help reduce the cost of collection of that data as well. One problem faced by fishermen in the past is that scientists tended to dismiss data collected by fishermen as anecdotal (therefore, unscientific) or self-serving. If fishermen are to contribute to the collection of scientific data -- and they do somewhat already with logbooks -- they first must be assured that the information will be used by scientists (not enforcement agents) and second that it will not be used, or misused, against them. Well designed logbook programs that are easy to use for fishermen are one step toward utilization of at-sea observances. A second step is to enact training programs for these fishermen to make there observations and data collection more useful to scientists/managers.

#### Habitat Protection

- The regional councils must be given greater authority to protect fish habitat if they are to carry out their fishery management responsibilities. Presently their only authority is the regulation of harvest, yet habitat -- or habitat destruction -- can be an important factor affecting the health of fish stocks. Even total closures on fishing effort will not conserve many important fish stocks unless habitat is also protected. Granting the regional councils/NMFS consultive authority, similar to that provided an agency charged with species recovery pursuant to Section 7 of the ESA, under the Magnuson Act is necessary for the conservation and management of many important anadromous and estuarine-dependent marine fish stocks under FMPs.

- An amendment to Magnuson, modeled after Section 7 of the ESA, as mentioned above, is one way of strengthening fish habitat protection. Draft language for such an amendment has been crafted by NMFS, as well as the Pacific States Marine Fisheries Commission.

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- Consultative authority, similar to that in Section 7 of the ESA, granted NMFS, USFWS, and state fishery agencies over federal actions affecting fish habitat is a necessary first step. Additional protection for fish habitat could be established by requiring permits from NMFS of private and public entities whose activities will adversely affect fish habitat of any fishery under a FMP or otherwise subject to federal protection. Where the activity affects the habitat of fishery resources subject to state management authority, permits from state fishery agencies should be required. Examples of where fishery permits should be required include dam construction, dredging, diversions, stream crossings (putting in logging roads, for example), discharges into waterways, or the diking and filling of wetlands.

- The councils and NMFS have no choice but to take a stronger, pro-active role in habitat protection, including on-shore issues affecting marine fisheries if they are to adequately manage and conserve such fisheries.

- The Magnuson Act needs to be amended, as mentioned above, to, at minimum, provide the regional councils/NMFS consultative authority (similar to Section 7 of the ESA) over actions affecting fish habitat. Additionally, it should be required that FMPs list critical habitat factors affecting the species or stocks in that plan.

Funding

- The following are the elements of what I believe (my organization has no position currently on this matter) must be included in any form of federal user fee (tax) on the fishing industry to offset federal fishery expenditures (NMFS research and enforcement, regional council costs):

1. All fees collected would go directly to NMFS/regional councils for fishery-related expenditures. No funds collected under this proposal would go to the General Treasury for later appropriation by the Congress (such as the ill-fated Coast Guard user fee).
2. For the commercial fishery, a nominal ad-valorem fee would be collected on all fish at the point of first sale. This includes all fish and shellfish whether harvested domestically or imported. In those states where a landing fee is already in place, a credit of up to 50% of the state fee should be given, whichever is less. For example, if the state fees on salmon were 7 cents per pound and the federal fee was 1% of value and the salmon at that time had an ex-vessel value of \$4.00 per pound, a credit of 2 cents per pound would be given for the state tax in the payment of the federal fish tax. Providing a credit for state fees assures that fishermen/processors from those states having no fees or low fees are not given a competitive advantage over those in states where fees are charged or may be substantial.
3. For the recreational fishery, in lieu of establishing a federal license, an amendment to the Wallop-Breaux tax on fishing equipment and vessels could be made, providing a nominal increase in the tax on marine fishing gear used by recreational fishermen and earmarking receipts from that increase in fees for NMFS/regional council support.
4. A financial oversight committee would be established nationally, made up of commercial and recreational fishermen and seafood processors -- ideally representatives from each regional council area -- to oversee the expenditures of the federal fishing fees.

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- In some fisheries it may be reasonable for those who stay in the fishery to pay into a buy-back fund aimed at reducing fleet capacity. However, buy-backs are not the answer for many fisheries, fish restoration is. Buy-backs are a form of surrender - giving up and admitting defeat. They reduce employment and the economic productivity of a fishery. In fisheries where environmental degradation has been responsible for declining fish populations or where fishermen were encouraged to get into a fishery through government programs, then it is unfair to tax those who choose to stay in the fishery to buy-out those giving up or deciding to quit.

- I have no opinion on the New York-New Jersey situation.

- In addition to a fee placed on recreational and commercial fishing, as outlined above, to fund NMFS/regional council activities, fees should be assessed on non-harvest activities that impact fishery resources. For example, a nominal fee on kilowatt usage could go a long way to funding Columbia River salmon populations that have been decimated by the operations of the hydro-power dams in that basin. Fees on pollutant discharges, water diversions, offshore oil and gas drilling, and timber sales in watersheds possessing critical fish habitat are all rational ways of insuring that those benefiting from activities harming fish or fish habitat pay the full fishery costs.

Council Membership

- Past amendments to the Magnuson Act (e.g., 1986) have done a great deal to ensure not only fair and balanced memberships, but knowledgeable as well. The balance on many of the councils is not perfect, nor are all of the members necessarily knowledgeable (see attached), but it is unclear what additional language could be put into the Act to improve the situation without making it totally inflexible. More than anything, members of Congress should raise hell with the Secretary over bad appointments and take it out on the agency in the following year's appropriation process. Fair and balanced representation should mean that the major interests in those fisheries under or being considered for a FMP in each region are represented. This includes commercial and recreational fishermen, processors, charter boat operators, seafood consumers and knowledgeable environmental group representatives. It also means that, since not all groups can be represented at any one time, members appointed are the types of individuals who can and will be fair and attentive to all sides in council deliberations.

- My feelings on the regional director of NMFS having a vote on a regional council(s) are ambivalent, however, I do not believe a vote should be extended to the Department of Interior representative (U.S. Fish & Wildlife Service) or any of the other current non-voting members of the regional councils.

- Increasing the number of nominees required to be submitted by each Governor from three to six might enable the Secretary to do a better job of ensuring fair and balanced council make-up. However, we have witnessed a Secretary in one instance make a bad decision when given seven names. Rather than require the Governors' submit six instead of three names, it might be better to allow the Secretary to request additional names from a Governor when the Secretary makes a finding that he/she would not be able to provide a fair and balanced council from the names submitted. In such an instance, the Secretary should also be required to inform the Governor of the types of individuals needed in that appointment round to assure council balance.

Changes in Industry

- The National Standards in Magnuson mandate that fishery conservation and management will be in the National interest. To

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the extent the regional councils or NMFS fails to act pursuant to the National Standards, Congress needs to step in or individuals/organizations should sue. Congress probably should review the ability of citizens to sue to enforce the National Standards, making sure that the federal judiciary has not made such suits a de facto impossibility.

- To the extent a FMP leads to the displacement of historic participants in a fishery, a number of questions need to be asked before deciding what is the proper federal role. These questions are:

1. Who or what are the historic participants? Are these people who have had a long history in the fishery or whose families have spent generations in this fishery? Or is it a type of fishing that has been used for a long period that is being displaced by an FMP?
2. Are a portion of these historic participants being displaced or are all of them being displaced?
3. Is the displacement temporary or is it permanent?
4. Why are these historic participants being displaced? Is it because of an allocation decision (i.e., allocating the resource to another user group(s)? Is it because the fishing gear is damaging or results in excessive by-catch or waste? Is it because they are inefficient or deemed inefficient? Is it because a new fishery has displaced these historic participants? Is it because there is insufficient resource to maintain these historic participants?
5. If the displacement of the historic participants is because of insufficient resource, was this a result of overfishing? Or, was it the result of the impacts of habitat degradation or natural oceanic conditions?

From this series of questions it should be possible to determine (1) whether or not the displacement of these historic participants under a FMP was warranted and (2) what is the appropriate federal response. To the extent the factors relating to the displacement were largely out of the control of the individuals or class of individuals (e.g., fish habitat degradation) there should be a greater federal role than if the problem was largely brought on by the historic participants. The nature of the federal response should be guided by the types of assistance it has provided farmers and U.S. industry.

#### Conflict of Interest

- As stated in my testimony, I believe conflicts of interest, which I defined, among regional council members should be dealt with by strict adherence to current conflict of interest regulations as well as full disclosure at the time of council votes of any interest, financial or otherwise, any member may have in the outcome of that vote. As far as the regional councils' legal counsel conflict of interest, this should be dealt with by reprogramming NOAA General Counsel's appropriation to provide each regional council with funds necessary to hire independent legal counsel.

#### Council Operations

- The major flaw in the Magnuson Act, is its failure to extend jurisdiction to fishery habitat. Most of the shortcomings in the original legislation have been dealt with periodically in the reauthorizations. "Eternal vigilance" is perhaps the best way to describe what needs to be done to assure the Act is implemented as its authors and supporters intended. This means regular



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Congressional oversight as well as providing citizens authority to sue when necessary to assure the Secretary and/or a regional council is fulfilling its duties and obligations under the law.

- The regional councils were intended to be something greater than merely advisory to the Secretary of Commerce, yet Commerce, at least recently, has downplayed the role of the councils to being something of advisory committees only. With the exception of oversight to assure the Act is being followed, the Secretary should exercise less authority over the council process.

- The question should not be if the councils' funding is further reduced, but rather, if NMFS appropriation is smaller where are the savings to be made in that agency to assure the councils get necessary funding. The councils are currently underfunded. One recommendation for providing the councils a new source of funds would, as an alternative to federal fish licenses of fish taxes, be to allow the councils to collect fees directly from those fisheries in each of their respective jurisdictions.

- Much of our fishery data remains inadequate. This results at times in FMPs and other fishery regulations being either too conservative or too liberal, resulting in either a failure to take full advantage of a fish stock or overfishing. Another problem, of course, as discussed in an earlier answer is when the "managers" have access to the data required for good management and wilfully refuse to use it.

- To the extent highly migratory species are to be managed under the Magnuson Act, that management should be the responsibility of the regional councils, provided that those councils taking on this authority are properly balanced to assure participants in the fishery are dealt with fairly.

- Let's face it, most Commerce Secretaries discover fisheries after their Senate confirmation. It is something that distracts them from trade and business issues. To the extent they are interested it's because a friend or contributor has an interest in a large fishing company or enjoys big game fishing. As a result, much of the Secretarial oversight has tended to be more meddling, in my opinion, than oversight, with some disastrous results. The 1993 Pacific Whiting and ocean salmon decisions are two good examples of where the Secretary should have left the Pacific Council decisions alone. Until we get a Commerce Secretary who prefers the company of commercial fishermen to foreign government representatives, who socializes as easy with the angler on the pier or the party boat as he does with Silicon Valley executives, than the less involvement the Secretary has the better.

- Logbooks are an appropriate tool for gathering data, as I mentioned in response to an earlier question. A logbook program, I believe, must meet the following conditions:

1. The information will be used. Fishermen want to know that that the data they supply will be used. They don't want to waste their time gathering data that is going to gather dust.
2. The information from each individual/vessel will be kept confidential. Only aggregated data will be released.
3. The information will be used by fishery managers/scientists and not by enforcement officials. Logbooks should not and do not constitute a waiver of the Fifth Amendment right against self-incrimination.
4. The logbook format should be simple and easy. Keep in mind most fishermen have many other duties on board aside from filling in logbooks. The easier they are to use the better (and more accurate) the information will be.



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5. The program is reviewed regularly and jointly by the participant fishermen and researchers to determine its adequacy and need for improvement.

- The process for developing FMPs and FMP amendments, as well as other regional council actions need to be reviewed with an eye toward streamlining -- making the process more timely. While there is a definite need for streamlining, caution must be taken to assure that public input and review into the process is protected.

- Logbooks are one way commercial and recreational fishermen can contribute to data collection, as was mentioned in a response to a question above. Further, providing fishermen training to make more sophisticated observations (aside from species caught, released, and which area they were taken in), such as measurements on oceanic conditions, forage, and detailed information about the fish taken can also help in data collection. Tagging is another area where fishermen can, and have, assisted in research. Lastly, fishing boats can often act as good research platforms, particularly on a job-specific contractual basis, saving funds otherwise appropriated for the construction, operation and maintenance of research vessels.

Questions for Zeke Grader

- Marking, or tagging, all salmon released from hatcheries with an adipose fin clip would provide the ocean commercial troll fishery and the ocean recreational fishery a means of readily identifying hatchery (i.e., marked) from natural spawning fish. The ocean salmon fisheries could then readily be adapted to target on the hatchery or marked fish, which can sustain a much higher harvest level. Releasing the unmarked, natural fish would reduce harvest pressure on these stocks allowing them to rebuild (the rebuilding must also include habitat and/or flow restoration to be meaningful). Since the ocean commercial and recreational fishery is pursued using barbless hooks, it should be possible to keep "hooking mortality" of the released natural stocks to a minimum.

As natural stocks recover (in some areas natural stocks are currently in good condition) the take of unmarked fish could be permitted -- in specified areas at specified times (similar to the way the ocean salmon fishery is conducted on all stocks presently). Thus, an ocean salmon fishery targeting on marked hatchery stocks would allow natural stocks to rebuild without shutting down the fishery and, later, allow the structuring of a natural stock fishery based on a sustainable harvest level.

Structuring an in-river fishery around marked fish is more of a problem. Using gillnets, the way salmon are taken in most of the in-river fisheries, is not conducive to the release of live fish taken in the gear. Thus a selective fishery targeting on marked, hatchery fish would probably not work since the unmarked, natural fish could not be released alive. This may not be a problem on the Columbia where the fishery might be timed and located in areas where the take would primarily be of hatchery stocks. But the smaller fishery on the Klamath presents a serious problem. That could, however, be remedied by switching from gillnets to wiers (historically used on the river) or dip nets (as used by Karok fishermen) where hatchery fish could be separated from natural stocks.

- In my testimony I referred to the heavy rainfall that occurred following the severe El Nino condition of 1982-83. That heavy rainfall provided good flow conditions in important salmon streams and rivers. Thus, while the salmon harvest and escapement of 1983 and 1984 was one of the lowest on record because of the higher ocean temperatures and lack of forage brought on by the El Nino, the good flow conditions in the rivers, coupled with good oceanic conditions beginning in 1984, meant the progeny of the low escapements had excellent survival and produced high catches (a

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record ocean harvest in 1988 in California) and good escapement in 1985, 1986, 1987 and 1988.

With our current technology, we have no way of deliberately manipulating the weather (though we may be inadvertently affecting it) to produce either good oceanic conditions or optimum rainfall levels. The one thing we are able to control, however, is man's impact on the environment. Salmon, for example, have endured both very wet and very dry conditions in rivers, as well as El Ninos, for millions of years. Remember, the recently ended six-year drought on the west coast did not devastate fish populations; salmon have survived other droughts. Rather, it was the reaction to the drought and the allocation of the water available that had such an adverse impact on salmon. In the first three years of the drought agricultural water deliveries actually increased. The business-as-usual water deliveries for agriculture in California, which uses an estimated 80-85% of the state's developed water, meant many urban users were put on rationing and precious little was left for fish and wildlife. Had all the water users -- agriculture, municipal, fish and wildlife -- shared equally the reduced supplies California's salmon populations would have fared far better. Instead, agriculture made record profits during the drought while salmon fishermen ended up on the beach.

- In my testimony, I stated that extending fishery jurisdiction did not have to be either onerous, burdensome nor costly. Certainly, providing NMFS/regional councils habitat authority modeled after the ESA Section 7 consultative process would not create whole new layers of government nor establish a new and unwieldy bureaucracy.

One way to help keep costs down, allow existing development/activities and still protect fish/fish habitat is look for new and creative solutions. I cannot comment on directly on the New York Harbor dredging situation, since I do not have the facts, however, I can describe the solution being worked out for San Francisco Bay dredging to protect fish.

The main dredge spoil disposal site for San Francisco Bay for the past two decades has been offshore Alcatraz Island in San Francisco Bay near the Golden Gate entrance. The theory of this site was that the materials would be dispersed to sea as a result of the downstream currents and the outgoing tides. However by the mid-1980's substantial shoaling was occurring at the Alcatraz site, a large mound was forming and some official from ports such as San Francisco believed the materials were simply being recirculated within the Bay and not dispersing to the ocean. Fishery groups, including our own, believed that the continued use of this disposal site was also having an adverse impact on important species such as Dungeness crab and herring.

In 1987, in response to the concerns raised about continued in-bay disposal and as a result of the mound at Alcatraz, the Corps of Engineers decided upon a nearshore ocean site for the disposal of spoils from a large dredging project about to be undertaken by the Port of Oakland. The problem was the disposal site was located in important fishing grounds offshore Half Moon Bay. Fishermen sued and stopped the dumping of material at-sea dumping. A stalemate resulted, with charges (later proven unfounded) that dumping in a deep water site further offshore, as proposed by the fishermen, would make the cost of the channel deepening prohibitive and billions of dollars would be lost to the local economy through the loss of shipping.

After the rhetoric from the Port and the Corps died down, meetings were convened between the ports, the Corps, the Navy, fishermen and fishery agencies, the EPA and other federal and state officials. This included the formation of the LTMS (Long Term Management Strategy) committee to develop an ocean site and upland

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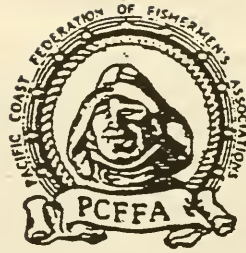
sites for dredge spoils disposal. The result of this has been a general agreement on the disposal of dredge materials, including their testing and requiring highly toxic materials to be placed in toxic waste disposal sites on shore. An ocean disposal site has been identified (the Navy has already begun using it) at an old munitions dump site in 1000 to 1200 fathoms of water (that was first recommended by fishermen in 1988) that will not interfere with fishing and have a minimal impact of marine resources. Testing at the site will also be required. Further, potential upland sites have been identified and some of the materials may be used for wetlands restoration or strengthening levees.

The point of this is that it was possible to modify a dredging proposal harmful to fisheries or fish populations, and change it so that the spoils can be put to use in a beneficial way or safely disposed of while, at the same time, maintain the economic viability of the dredging project. The Port of Oakland, the Port of San Francisco and the Navy will be able to dredge and deepen their facilities to accommodate the newer and larger vessels. Wetlands will be created and material will be available to maintain levees. And, finally, a site has been found to reduce or eliminate the need for the in-bay Alcatraz dumpsite.

There are a number of other examples, such as the ricelands project in California, where measures to protect fisheries have resulted in new and creative ways of conducting those types of operations traditionally harmful to fish or fish habitat, that I would be glad to provide the Subcommittee and its staff, if requested.

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# pcffa FRIDAY



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5 July 1991

## PFMC APPOINTMENTS - COMMERCE SNUBS CONGRESS AND MFCMA

U.S. Secretary of Commerce Robert Mosbacher has announced the 30 appointments and re-appointments to the nation's eight regional fishery management councils. As expected, Jim Harp (tribal representative) from Washington, and Frank Warrens (charter boat representative) from Oregon were reappointed to the Pacific Fishery Management Council (PFMC). The two California appointments to the PFMC, however, came as a shock to the west coast fishing industry and at least one of the appointees.

Bob Fletcher, president of the Sportfishing Association of California (SAC) representing southern California charter boats, and Mike Montgomery a southern California lawyer and big game fisherman were named to the seats that had been held by Dave Danbom (salmon troll representative) of Moss Landing and Jerry Thomas (seafood processing representative) of Eureka. The Pacific Council has regulatory jurisdiction over the salmon, groundfish and anchovy fisheries offshore California, Oregon and Washington. The appointments become effective in August.

The two California appointments and perhaps as many as eight other council appointments made by Commerce appear to violate the spirit, if not the letter, of Congressional intent in past amendments to the Magnuson Fishery Conservation & Management Act, 16 USC 1801 *et seq.*, specifying the qualifications of persons to be appointed to the regional councils. Section 302 (b) of the Magnuson Act states (as amended), 16 USC 1852 (b)(2):

(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. [emphasis added] Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary, shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

**SPEAK TRUTH TO POWER**



(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council [emphasis added]. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions by the Secretary to ensure that such fair and balanced apportionment is achieved.....

Earlier this year, California Governor Pete Wilson submitted seven names to the Secretary for the two positions held by California (the Magnuson Act requires a minimum of three nominees from the Governors for each position). Included in the list were both Dave Danbom and Jerry Thomas who have both served two terms as members of the PFMC. (Recent amendments to the Magnuson Act prevent individuals from serving more than three terms, although under this Administration Commerce has not been reappointing individuals serving more than two terms.) As the following information that PCFFA has on the seven Wilson nominees indicates, five were highly qualified for appointment to the PFMC, one was questionable and one clearly was not qualified under the MFCMA for appointment. The seven nominees were (in alphabetical order):

NAT BINGHAM (as readers of FRIDAY are aware) is a salmon troller from Mendocino with over 25 years fishing experience. In addition to being president of PCFFA, he has served as a member of the PFMC's Salmon Advisory Subpanel since the mid-1980's and is currently its chairman. He is also a member (appointed by the Governor) of the Klamath Fishery Management Council and the Klamath River Task Force. He serves (appointed by the Director of Fish & Game) on the Commercial Salmon Trollers Advisory Committee ("Salmon Stamp Committee") overseeing the expenditure of funds for salmon restoration from the commercial salmon stamp program. Bingham was a 1989 "Highliner of the Year" recipient, the U.S. fishing industry's highest award, and an earlier recipient of the "John Pelnar Award" for his work in salmon conservation. He writes a weekly environmental column carried by north coast newspapers and is a well-known north coast conservationist.

DAVE DANBOM of Moss Landing is a commercial salmon fisherman with over 35 years fishing experience. He was the first troller ever appointed to the PFMC. He was a founding board member of PCFFA and former vice-president, as well as a former president of his local association, the Moss Landing Commercial Fishermen's Association. He, too, was a "Highliner of the Year" recipient (1983) and "John Pelnar Award" winner. Danbom is regarded as the father of the state's successful commercial salmon stamp program and, like Bingham, serves on the Stamp Committee. A former member of the California Advisory Committee on Salmon & Steelhead Trout, Danbom led the effort for the adoption of barbless hooks (to conserve hooked undersized salmon) in California's troll fishery. Danbom's expertise extends from fishery conservation to fish marketing, having pioneered a successful at-sea freezing operation for troll salmon and developed a market for his product in the premium restaurant trade.



ROBERT FLETCHER of San Diego is currently president of the Sportfishing Association of California (SAC) which represents southern California charter sportfishing vessel operators. Fletcher comes from a prominent and politically well-connected (Republican) southern California family. He was formerly a charter boat operator and in 1983 was named Deputy Director of the California Department of Fish & Game by then-Governor George Deukmejian. He served under Don Carper and later Jack Parnell. While Parnell was the Department director, Fletcher sat as Fish & Game's representative on the PFMC. Fletcher later left the Department to take over as president of SAC, replacing long-time president Bill Nott who retired due to ill-health. Fletcher's membership does harvest a small amount of groundfish, but have not been subject to PFMC regulations; their principal fisheries are offshore Mexico. Fletcher's members do take some salmon offshore southern California (between Newport Beach and Santa Barbara), however he has actively lobbied against their paying for the salmon restoration stamp that central and northern California charter boats engaged in the salmon fishery pay for. Fletcher, reportedly, did not seek the PFMC appointment (he was supporting Roger Thomas); he was seeking an appointment to Commerce's Marine Fisheries Advisory Committee (MAFAC).

MICHAEL MONTGOMERY is a lawyer from southern California. He is largely an unknown in the state's fishing industry and has certainly not been active in fishery regulation or conservation issues at the state level (or at the regional level). From what PCFFA has been able to learn, he is a big game sport fisherman with property in Hawaii. PCFFA is unaware of any expertise Montgomery has with salmon, groundfish or anchovy. He is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Like Fletcher, he is politically well-connected and, unlike Fletcher, is believed to have used that influence at the Secretarial level to secure the PFMC appointment.

JAMES PONTS is a longline fisherman from Fort Bragg with over 35 years experience in the commercial fisheries. Pons grew up in the fishing industry, putting himself through college fishing for salmon. In addition to fishing, he was a high school teacher and coach until retiring from that to devote full-time to fishing. He is one of a handful of Fort Bragg fishermen (e.g., John Figueiredo, Eldon Cox) who switched from salmon and albacore to longlining for blackcod and halibut to become some of the most successful fishermen along the west coast. Pons operates his boat the F/V Blackhawk offshore northern California, Oregon and Washington and has been a longline representative on the PFMC's Groundfish Advisory Subpanel. There has never been a longline fisherman on the PFMC.

JERRY THOMAS is vice president of Eureka Fisheries, headquartered in Fields Landing, one of the largest salmon and groundfish processing firms on the west coast. He was the only processor representative on the PFMC. Thomas has been active in the California Fisheries & Seafood Institute (CFSI), representing the shoreside sector of the state's commercial fishing industry, and was the former president of that organization. He has been active in the National Fisheries Institute (NFI), and he helped organize the Pacific Processors Association, specifically to look after the interests of California's larger fish processors. In addition to bringing to the Pacific Council the perspective of fish processors, Thomas has been a defender and advocate of the north coast sport fishery.

ROGER THOMAS of Burlingame is president of the Golden Gate Fishermen's Association, representing charter boat operators in northern and central California. His members take passengers for salmon, rockfish (groundfish), California halibut and striped bass fishing, as well as whale and sea bird watching trips. He is an active charter boat owner and operator himself. Thomas was an original member of the PFMC's Salmon Advisory Subpanel and later served out an unexpired term on the PFMC and another full term. He is a former member of the California Advisory Committee on Salmon & Steelhead Trout and a former member of MAFAC as well. He presently serves on the national Sea Grant program review committee. Thomas led the effort to have barbless hooks adopted for the ocean sport salmon fishery and convinced his members to join with commercial salmon fishermen in restoration programs through the salmon stamp program. Although considered a sport fishing advocate, Thomas is highly respected in the commercial fishing community for his knowledge and fair dealing and had considerable commercial fishing support for his appointment.

As is evident, five of the nominees -- Bingham, Danbom, Potts, Jerry Thomas and Roger Thomas -- clearly fall within Congress' definition of qualified individuals to sit on the Pacific Council. Robert Fletcher is somewhat less qualified than the others for a seat on the PFMC, since SAC's members have only a marginal interest in the salmon and groundfish fisheries, although Fletcher is highly qualified for a seat on MAFAC -- the position he was seeking. From what PCFFA has learned of Montgomery, he does not meet the qualification standards set out by Congress for membership on this regional council.

Since its passage in 1976, Congress has amended the Magnuson Act regularly to remedy past administration abuse of the appointments to the regional councils. Balance was called for to deal with problems in the Gulf and South Atlantic where Commerce had stacked those two regional councils with wealthy big game sport fishing representatives. And, to prevent the appointment of dilettantes and others with only a marginal interest or knowledge of the fisheries under a regional council's planning jurisdiction, such as happened with the California appointments to the PFMC in the early 1980's, Congress began to require that members be knowledgeable and active in those fisheries dealt with by a council.

If the newest appointments are cleared (they become effective 11 August) the Pacific Council's appointed voting membership (the state fishery directors of California, Idaho, Oregon and Washington each have a mandatory seat, as does the National Marine Fisheries Service) will look like this (in alphabetical order):

- \* PHIL ANDERSON (Washington) - Charter Boat Representative (sport)
- \* SCOTT BOLEY (Oregon) - Salmon Troll Representative (commercial)
- \* BOB FLETCHER (California) - Charter Boat Representative (sport)
- \* JIM HARP (Washington) - Tribal Fishery Representative (tribal)
- \* PETE LEIPZIG (California) - Groundfish Trawl Representative (commercial)
- \* MIKE MONTGOMERY (California) - Sportfishing Representative (sport)
- \* RICHARD SCHWARZ (Idaho) - Inland Representative (sport)
- \* FRANK WARRENS (Oregon) - Charter Boat Representative (sport)

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With the new appointments there will only be one active commercial fisherman on the Pacific Council -- Scott Boley. There will not be a seafood processing representative and there has yet to be named a longline representative. There will, however, be three charter boat representatives.

The Department of Commerce's press release announcing the appointments said they "reflect Mosbacher's concern about the need to improve the status of the United States' fishery resources and for balancing the council's expertise to reflect the nature and importance of the fisheries in each jurisdiction....The nominee's statements regarding their philosophies on the stewardship of fisheries were significant factors in Mosbacher's decisions. Nearly half of the council seats will be filled by new appointments. The council membership represents a balance between commercial and recreational interests."

Upon reading Commerce's press release and examining the California appointments to the PFMC, one west coast fishing representative remarked that "it appears Commerce, like Interior, attempts to create its own reality through press releases....these appointments reflect an uninformed and uncaring philosophy. The Secretary has apparently confused fishery conservation with political contributions." At stake are the fishery resources offshore the west coast, the livelihoods of the men and women who depend on those resources, the economies of many coastal communities, and consumer and recreational access to these fishery resources.

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#### WIVES TO MEET IN EUREKA

The Pacific Coast Fishermen's Wives Coalition will meet 2-4 August in Eureka. The meetings will be held at the Conference Room of the Fishermen's Marketing Association, at 320 2nd Street in Eureka. Speakers include Eureka Mayor Nancy Fleming, and PFMC council member Jerry Thomas. For more information on the meeting, contact Paula Yoon at (707) 822-3577.

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#### VESSEL SAFETY - NATIONAL RESEARCH COUNCIL RELEASES REPORT

The National Council of Fishing Vessel Safety & Insurance has announced that the Marine Board of the National Research Council has released its report on fishing vessel safety. The 300-page report concludes that the fishing industry can be made safer by mandating systematic, industry-wide attention to professional qualifications; suitability and physical conditions of vessels and equipment; and safe operational and occupational practices. Specific recommendations from the committee include:

*"Don't write anything you can phone, don't phone anything you can talk face to face, don't talk anything you can smile, don't smile anything you can wink and don't wink anything you can nod"..Earl Long*

FISHERMEN ARE NOT THE ONLY PROBLEMS  
WITH FISHERIES MANAGEMENT

NAT BINGHAM  
Habitat Director

Pacific Coast Federation  
of Fishermen's Associations

Presented to the American Fisheries Society  
Annual Meeting, Portland, OR

September 2, 1993

While overfishing usually gets the blame for the perceived decline of fisheries, recreational and commercial fishing is often not the reason why fish stocks have declined. Loss of habitat, particularly habitat essential to the reproductive phase of the life history of fish, can often be the real culprit in the decline of a fishery. Because fishing is relatively easy to manage as compared to halting the destruction of habitat, the fisheries management agencies have most often chosen to address declines of fish stocks by reducing fishing efforts (using fish quotas, reduced salmon seasons, etc.), instead of dealing with the real problems of habitat loss. Indeed, in most instances fisheries managers do not even have the legal power to correct habitat problems.

The problem for fishermen is that in many cases it is really loss of habitat that is driving the decline, yet the problem usually will only be addressed by reducing fishing harvests. While quota cutbacks may produce a temporary improvement in recruitment of spawning stocks due to minor but immediate reductions in mortality, nevertheless the real decline trend usually continues. Managers then react with further reductions of fishing, followed by more declines, etc., in a vicious downward spiral which ultimately drives the fishermen out of business and (unless habitat problems themselves are corrected) ultimately jeopardizes the stock itself.

This effect is particularly true in the salmon fishery, where reproduction is totally dependent on the health of freshwater habitat. Many factors can impact the migration, spawning and rearing of salmon. The effects of hydropower dams, water diversions and forestry on salmon are well known. Hydropower dams such as those on the Columbia River impede or



NAT BINGHAM

block upstream migration and cause mortality and impoundment of downstream migrant juvenile salmon. Water diversions entrain juvenile outmigrant salmon, such as at the Delta Pumps on the Sacramento River, and cause loss of the food chain in estuarine systems.

Land use practices such as timber harvesting, road construction, livestock grazing and rural subdivision impact salmon spawning and rearing habitat by causing sedimentation of spawning beds, aggradation of stream channels, filling in of pools and loss of shade canopy causing elevated water temperatures in streams.

All of these negative effects on fresh water habitat are politically difficult to deal with. Each major interest such as the Bonneville Power Authority or the Northwestern timber harvesting companies can command a lot of political clout. The state and federal water contractors in California are one of the most powerful interests in that state.

Given the fact that the National Marine Fisheries Service and the U.S. Fish and Wildlife Service have little direct management authority over decisions affecting inland habitat, it is not surprising that they usually react to the decline of a fishery by seeking to do the one thing they have the actual the power to do -- which is to control fishermen.

If the true and only cause of the decline of a fishery is exclusively overfishing, then that treatment may be appropriate. However, where the cause of a decline is an array of multiple factors such as we see in the salmon fishery, then reducing harvests simply will not solve the problem. Indeed, even if fishing is reduced to total closure (as has already happened for salmon from Central Oregon to Central California) then the effect will simply be to economically devastate the fishing fleet and silence the voice of fishing interests as advocates for habitat protection. Meanwhile the downward spiral will still continue. Even if a fishery is not completely closed, but is severely reduced, the result is to refocus fishermen on increasingly bitter allocation battles which pit different sectors of the fishery against each other when they should be working together to restore fish habitat.



NAT BINGHAM

Faced with this situation, many fishery biologists have felt that the only tool available to force protection of threatened critical fish habitat is the federal Endangered Species Act (ESA). While the ESA does give NMFS the necessary power to enforce habitat protection under the "Section 7 consultation" process, even this process is still subject to political pressure. An example is the recent "no jeopardy" finding on the hydropower dams' impacts on threatened and endangered salmon stocks in the Columbia River. It is well known that 90 to 95% of all the human caused salmon impacts on the Columbia River are caused by these dams. The obvious treatment is reservoir drawdowns, which would only cause an estimated 5% increase in power rates in what are still the cheapest electrical power rates in the country. Yet instead of forcing needed changes in hydropower operations against stiff political resistance, NMFS managers have chosen to go after the fishermen, who only cause a 5% impact on the stocks.

There is an available remedy to this problem. Habitat consultation authority should be given to the Regional Fishery Management Councils as part of this Congressional sessions re-authorization of the Magnuson Act. The Regional Councils are an ideal vehicle for this because they are fully accessible to fishermen and concerned citizens. If a consultation process similar to the "Section 7" process under the ESA could be added to the Magnuson Act, this would make regional management of fisheries truly possible. All factors impacting the life history of fish could then be addressed. Fishermen would also be more willing to address their share of the impact and accept reductions in fishing if they saw that the Councils were truly addressing the habitat factors as well. This sort of sign-off authority prior to a species being pressed to near extinction would also make many listings under the ESA unnecessary. As it is, it is only after a species has been listed under the ESA that fisheries managers are given any serious enforcement authority over habitat. By then options are fewer and recovery far more difficult.

In conclusion, it is my recommendation that this legislative reform to the Magnuson Act -- giving the Councils real authority to prevent habitat destruction -- be vigorously pursued.

Attachment #2

HONORABLE RON BROWN  
U.S. SECRETARY OF COMMERCE  
14TH. AND CONSTITUTION AVENUE, N.W.  
WASHINGTON, D.C. 20230  
SEPTEMBER 7, 1993

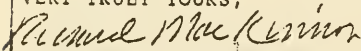
DEAR MR. SECRETARY,

I AM WRITING TO YOU TO EXPRESS STRONG SUPPORT FOR THE APPOINTMENT OF BILL KIER AS DIRECTOR OF THE NATIONAL MARINE FISHERIES SERVICE. MR. KIERS EXPERTISE IN HABITAT RESTORATION AND HIS PROVEN ABILITY TO COALESCE WIDELY DIVERGENT POLITICAL VIEWPOINTS IS SORELY NEEDED IN N.M.F.S. AT THIS TIME.

THE COMMERCIAL FISHING INDUSTRY IN SOUTH FLORIDA HAS LONG BELIEVED THAT HABITAT RESTORATION AND CONSERVATION ARE THE KEY INGREDIENTS TO ENSURE THE LONG TERM HEALTH OF OUR FISH STOCKS. FLORIDA HAS BEEN A BATTLE GROUND IN THE WAR BETWEEN THE THE SPORTS FISHERMEN AND THE COMMERCIAL INDUSTRY. THIS TRAGIC SITUATION HAS GONE ON TOO LONG AND HAS CAUSED MUCH NEEDLESS SUFFERING AND ANIMOSITY ON BOTH SIDES. WE BELIEVE THAT THE STRONG LEADERSHIP THAT BILL KIER WILL PROVIDE CAN END THIS NEEDLESS FIGHT AND THAT IN THE FUTURE BOTH COMMERCIAL AND RECREATIONAL INDUSTRIES CAN WORK TOGETHER TO ENSURE THE LONG TERM HEALTH OF THE FISH STOCKS NOT ONLY OFF FLORIDA BUT ALL OUR COASTS. WE NEED BILL KIER AND HOPE THAT YOU WILL LEND YOUR SUPPORT TO HIS APPOINTMENT.

THANK YOU FOR YOUR TIME AND CONSIDERATION OF THIS MOST IMPORTANT APPOINTMENT.

VERY TRULY YOURS,



RICHARD MACKINNON  
PRESIDENT, MIDDLE AND UPPER KEYS ORGANIZED FISHERMEN OF FLORIDA  
123 PALERMO DRIVE  
ISLAMORADA, FLORIDA 33036

Attachment #3

FORMAL LEGAL OPINION  
OFFICE OF THE GENERAL COUNSEL  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NO. 63

Council Authority to Obtain Independent  
Legal Services

Statutes Interpreted: F.C.M.A., §§302(f)(1) and 302(f)(3)

Written by: J. Drewry

Date: 5 May 1978

Summary: Council Authority to Obtain Independent Legal Services

Issue

Does the Fishery Conservation and Management Act of 1976 (FCMA) authorize a Regional Fishery Management Council to obtain its own independent legal services either by (1) hiring an attorney as a full-time or part-time staff employee or (2) contracting with a private attorney for legal services?

Conclusion

Yes, section 302(f) of the FCMA gives each Council the authority to hire its own staff attorney or contract with a private attorney when the Secretary determines those services are necessary to the performance of the Council's functions.

Background

You have asked for GCF's opinion on the Councils' authority to obtain independent legal counsel, outside the NOAA General Counsel's Office, General Services Administration (GSA), and Department of Justice.

This issue has been addressed on several occasions since the enactment of the FCMA. The NOAA General Counsel announced at the National Orientation Conference on the FCMA in September 1976 that day-to-day legal services would be furnished by NOAA. He added that in some instances there may be good reason for the Councils to seek an independent legal opinion and the the FCMA did not prohibit the Councils from obtaining such advice.

On September 15, 1976, NOAA published interim regulations (42 FR 39436-39455) governing the operations of the Regional Councils. These interim regulations made the following reference to legal services:

"Personnel. - (1) Council staff.

\* \* \* \* \*

(2) Ad Hoc staff support...Legal Counsel on a continuing basis shall be obtained from the regional office of the NOAA Office of General

GC OP. 63

Counsel. Other experts and consultants may be utilized as the Council deems appropriate, consistent with budgetary limitations." 50 CFR §601.23(e).

On July 1, 1977, NMFS Director Schoning sent the Council Chairmen a memorandum discussing considerations to be taken into account in NOAA's allocation of funds to the various Councils. He proposed that "cost efficiency" be a key criterion to be used in evaluating Council funding requests:

"[W]ith regard to such matters as legal services, for example, the NOAA Office of the General Counsel has already assigned staff lawyers to the field to provide such services to the Councils. Nevertheless, this is not intended to imply that Councils are totally precluded from seeking legal counsel from outside of NOAA and the Federal government. It is our interpretation that Councils may contract with outside attorneys, experts, and consultants as required consistent with available resources. However, in the interest of minimizing costs and avoiding any unnecessary duplication of effort, we would not expect non-government legal counsel to be contracted for on a continuous or near-continuous basis. We would anticipate that Regional Councils will first seek legal counsel from NOAA, and seek it from some other source only when NOAA cannot provide it." (Page 7 of the memorandum.)

On July 5, 1977, NOAA published its final regulations governing Council operations (42 FR 34450-34460). The final regulations, in response to several comments, revised §601.23(e)(2) to make it clear that Councils were not prohibited from seeking independent legal counsel:

"Legal counsel on a continuing basis is available for the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants, including legal counsel, may be used as the Council considers appropriate, consistent with budgetary limitations..." (Emphasis, supplied, to indicate language added to final regulations.)

The most recent communication on this subject is a letter from the NOAA General Counsel to Richard N. Sharood. The letter, dated September 27, 1977, discusses the New England Council's interest in contracting with Mr. Sharood for legal services. The General Counsel first addresses "the basic right of the Council to seek independent legal advice and to use Federal money to pay for it." In doing so, he notes that "we have given thought to this question" and states that "the NMFS policy is best described" in Mr. Schoning's July, 1977 memorandum, quoting the same passage set forth earlier in this Background section.

In sum, NOAA's FCMA regulations and official pronouncements reflect a determination that the FCMA authorized Councils to obtain independent legal advice, subject to the Secretary's control over funding. In my analysis of the FCMA and its legislative history, discussed below, I conclude that our present position is legally correct. The Councils should, however, ensure that such legal services do not conflict the jurisdiction of the Attorney General over

litigation, investigation of claims pending in federal agencies, or otherwise as expressed in 5 U.S.C. §3106 and 28 U.S.C. §§514-519. Matter of Navajo and Hopi Indian Relocation Commission, Comp. Gen. Op. #B-114868.10, February 10, 1978.

### Discussion

Section 302 of the FCMA establishes the eight Regional Councils, and lays the organizational foundation for their operations. Section 302(f) addresses issues relating to Council "staff and administration." There are two provisions that could be read to authorize a Council to obtain independent legal services, sections 302(f)(1) and 302(f)(3).

#### 1. Attorney as Council Employee

Section 302(f)(1) states that:

"Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions." (Emphasis supplied.)

Whether an attorney may serve as a Council staff employee depends on the administrative character of his or her position. The mere fact that a Council employs a person entitled to practice law does not inevitably label that individual as a "staff attorney." A Council's executive director or administrative assistant could be, and in some instances has been, an individual admitted to the practice of law. What happens, though, when a Regional Council purposes to create a staff attorney's position?

The answer turns on the meaning of "administrative." Rules of statutory construction call for words to be given their normal meaning, except when they are words of art, intended by the legislature to have a technical sense. (Addison v. Hill Fruit Products, 322 U.S.C. 607, 617-618, 64 S.Ct. 1215, 1221, reh. den. 323 U.S. 809, 65 S.Ct. 27.) "Administrative" is not a defined term in the FCMA. Moreover, because the FCMA is silent regarding the duties of an executive director we cannot infer special meaning from the fact that section 302(f)(1) categorizes the executive director as an administrative employee.

There is also no indication in the legislative history that Congress intended special meaning. The comparative print of the House bill and the Senate bill reveals that neither version referred to Council staff employees as "administrative" employees. (See A Legislative History of the Fishery Conservation and Management Act of 1976, 94th Cong., 2nd sess. 117-222 at 174-175.) The House bill read, in pertinent part, as follows:

"Council Staff. The Secretary shall make available to each Council such staff, information, and personnel services as it may reasonably require to carry out its functions."

The corresponding portion of the Senate bill read:



"[Each Council] may appoint, and assign duties to, an executive director and such other full and part-time employees as are necessary to conduct business..."

The Conference Committee then blended the House and Senate versions and inserted the qualifying word "administrative" before "employees." The Conference Committee Report does not explain why the insertion was made, lumping together all of the provisions of section 302(f) by saying that "[e]ach Council is authorized to appoint and obtain staff and administrative support and other services..." (See Legislative History, at 87.)

In researching the case law, I have concluded that there is no body of law which has developed over the years to compel a technical construction of the word "administrative." (See Davis, Administrative Law Treatise 1-6 (1958); Administrative Law, 1 Am. Jur. 2d 806-807.)

A number of courts have construed the phrase "employee employed in a bona fide...administrative...capacity" as used in an exemption from the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended (FLSA), 29 U.S.C. §213(a)(1). The applicability of these cases to the present situation is marginal because three categories of employees, "executive, administrative, or professional," were specified in the exemption. Notwithstanding the overlapping common usage of these terms, the Department of Labor issued separate regulatory definitions for each category of employee. In Stranger v. Glenn L. Martin Co., 56 F. Supp. 163, at 166 (D. Md. 1944), the court noted:

"The terms 'executive' and 'administrative' are, to a large extent, overlapping in common usage, but we may assume they were not intended to cover precisely the same types of employment or they both would not have been used... It is appropriate to limit the term 'executive' to persons whose duties include some form of managerial authority, that is to say, to persons who actually direct the work of other persons, and to apply the term 'administrative' to persons performing a variety of miscellaneous but important functions in business..."

For essentially the same reason lawyers were readily placed in the "professional" category, along with other employees having specialized learning. (See 29 CFR §541.302.)

The case law makes it clear that "administrative employees" has a distinct meaning under the FLSA which excludes "executive" and "professional" employees. However, the case law does not attribute to other Federal statutes the meaning of "administrative employees" which has evolved from administrative and judicial construction of the FLSA. In addition, nothing in the FCMA and its legislative history indicates that the FLSA meaning is to be used in Section 302. .

One aspect of the FLSA precedent should be explored a little further before we conclude that "administrative" under the FCMA is intended to be given its usual meaning. As it is noted later in this memorandum, section 302(f)(3) states that the Secretary shall provide such "administrative and technical support services" as are necessary for the effective functioning of each Council. It might be argued from this language that FCMA administrative

support services and technical support services are like the three classifications in the FLSA exemption, two entirely distinct kinds of services. There is, however, nothing in the FCMA or its legislative history to show whether legal services are administrative support services or technical support services. In addition, since the two phrases are used in the conjunctive, rather than the disjunctive as in the FLSA exemption, it is not clear whether they were intended to be mutually exclusive categories. For these reasons, I do not believe section 302(f)(3) is helpful in explaining whether legal services are administrative in character, particularly since NOAA has not issued regulatory definitions for the two phrases in question.

Because case law, the FCMA, and its legislative history indicate no special meaning for "administrative," we must look to the normal usage of the word. Standard dictionary definitions refer to the management of an institution and to the execution of public affairs. An illustration of this dual sense is the "Administrator" of NOAA, who administers the internal organizational affairs of the agency and executes the agency's public program. Thus in light of normal usage, it is possible that "administrative" in section 302(f)(1) applies not only to the every-day management of Council operations but also to the way in which the Councils substantive responsibilities are carried out.

Applying these two meanings of "administrative" to the case at hand, a staff attorney could perform a wide range of services and still be regarded as an administrative employee. Suppose a Council staff attorney renders specific advice and drafting services on such matters as employee rights and benefits, official liability of Council members for particular actions, and procedural compliance of Council operations with NOAA regulations and OMB guidelines. This kind of advice is as important to the daily management of a Council as the efforts of the executive director's secretary or an administrative assistant designated to set up Council hearings and meetings.

Suppose, on the other hand, that a Council staff attorney evaluates the legal implications of a draft fishery management plan (FMP). Section 302(n) of the FCMA lists FMP preparation and submission as the first function of each Council. The attorney, in giving such advice, would be performing an administrative function in the second sense, helping the Council to execute its public responsibility to devise management plans. The attorney will not be making policy, but rather will be assisting the Council in selecting the means to effect policy. Such legal advice can help Council members choose among alternative management measures by highlighting the legal implications of each, and insure that an FMP once submitted will pass muster during Secretarial and judicial review. Thus the attorney, like the executive director who insures that FMP's are in proper form and submitted to the Secretary in a timely fashion, plays an integral role in the execution of the Council's FMP development responsibility.

Nevertheless, while I believe a lawyer advising on Council operations and policy execution would qualify as an "administrative employee", I also believe the definition of "administrative" to be a minor element of section 302(f)(1), for the Councils may hire only those employees determined by the Secretary to be necessary to the performance of Council functions. NOAA staff attorneys are already rendering extensive legal services to the Councils. The Secretary, who must pay a Council's bills, may therefore determine it is unnecessary for a council to have its own staff attorney. This could be seen as needless

duplication, since even with the advent of Council staff attorneys, NOAA attorneys would still have to participate in the Secretary's two legal assessments of each FMP, required by sections 304(a) and 305(c). This Secretarial discretion to forbid the hiring of staff attorneys may be exercised on a case-by-case basis, as it is now, or it may be applied by regulation to all Councils pursuant to sections 302(f)(6) and 305(g).

## 2. Attorney as Council Contractor

Section 302(f)(3) states:

"The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council." (Emphasis added.)

This provision authorizes the Secretary to make NOAA regional attorneys available to the Councils. In light of my discussion concerning section 302(f)(1) and the fact that lawyers serve in a supporting role, I have no difficulty concluding that legal services may be described as "administrative...support services" or "technical support services."

Section 302(f)(3) does not say how these services are to be provided by the Secretary. Therefore, she may use this authority to provide Councils with the services of attorneys of the Commerce Department. This is now being done under 50 CFR 9602.23(e)(2). Moreover, section 302(f)(7)(E) states that the Secretary shall pay "such other costs" as she determines to be necessary to the performance of the Councils. The Secretary could consequently make contract funds available for a Council to obtain its own independent legal services in appropriate instances. The NOAA Council regulations caution that when a Council seeks to contract for independent legal advice, it should keep in mind its budgetary limitations.

## FOOTNOTES

<sup>1</sup> See e.g., Webster's Third New International Dictionary which defines "administrative" as "of, belonging to, proceeding from, or suited to administration..." In turn, "administration includes two meanings which are germane to the question at hand: (1) "[T]he management of public affairs as distinguished from the executive or political function of policymaking", and (2) "The principles, practices, and rationalized techniques employed in achieving the objectives or aims of an organization." See also, e.g., American Heritage Dictionary of the English Language (1976) which defines "administration" to mean "the management of affairs" and "the management of any institution, public or private."

# pcffa FRIDAY



VOL. 21, NO. 14

HARBOR DAY ISSUE

10 September 1993

## IDAHO FILES SUIT AGAINST NMFS OVER SNAKE RIVER SALMON

The State of Idaho today filed suit against the National Marine Fisheries Service, the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation for ignoring the adverse effects of their operations in the Columbia and Snake river basin on depressed salmon stocks. The suit was filed in federal district court in Boise against the three federal agencies.

On 11 June, the Idaho Department of Fish & Game issued a 60-day notice of intent to sue, pursuant to Section 11 of the Endangered Species Act (ESA), 16 USC 1540, for violations of the ESA and its implementing regulations against the three agencies and the Bonneville Power Authority (BPA). Idaho's notice related to NMFS' 26 May Biological Opinion on the 1993 operation of the Federal Columbia River Power System (FCRPS) (see FRIDAY, 20 August, pp.10-11), and the operation of the FCRPS by the BPA, the Corps and the Bureau.

SNAKE RIVER KING (chinook) and sockeye salmon are listed as threatened under the ESA. NMFS is the lead federal agency responsible for restoring salmon runs, however in its Biological Opinion of river operations ignored the dams' deadly role in the disappearance of Snake River salmon. The Corps operates eight hydroelectric dams in the two rivers; these dams lie along the migration route of the listed Snake River runs. The Bureau is the custodian of water in the federal system.

On 17 February, the action agencies initiated consultation with NMFS under Section 7 of the ESA regarding FCRPS operations. NMFS biologists prepared a draft "jeopardy" opinion on the operation of the dams, but were overruled by their Regional Director, Rolland Schmitten, reportedly under pressure from House Speaker Tom Foley (D-WA). On 26 May, over a month after being promised, NMFS issued a Biological Opinion that concluded that FCRPS operations would not jeopardize the continued existence of listed Snake River salmon stocks. This conclusion was reached despite the finding in the Biological Opinion that the FCRPS will kill between 55 to 77% of juvenile and 33-41% of adults Snake River spring/summer kings, and 81-93% of juvenile and 41% of adult Snake River fall king salmon. The Biological Opinion further concluded that the FCRPS will take 55 to 77% of juvenile and 8% of adult Snake River sockeye passing through the FCRPS.

**SPEAK TRUTH TO POWER**



The decision to issue the "No Jeopardy" opinion was made at the regional level. At least one official in the Washington office of the Department of Interior attempted to intervene to gain protection for the salmon but was told by officials at the Department of Commerce and the National Oceanic & Atmospheric Administration (NOAA) that the decision on the FCRPS operation was being left up to the NMFS Regional Director. A "jeopardy" opinion would have affected FCRPS operation. In return for overruling his biologists on the "jeopardy" opinion, Schmitten was apparently rewarded by getting Foley's endorsement to become NOAA Assistant Administrator for Fisheries (director of NMFS). Ironically, as Schmitten was overruling his biologists, he was telling Alaska trollers and other salmon fishermen that they had to "do their share" to protect Snake River salmon stocks.

"Bad politics outweighed science in this biological opinion", said Idaho Governor Cecil Andrus announcing the filing of the lawsuit. "The downstream utilities and their customers called in their markers to keep from changing business as usual to help a fish -- even the salmon, whose presence in our waters helps to define the Pacific Northwest."

In its suit, Idaho seek a court order to force the federal agencies to reconsider the politically contrived conclusion that the dams and the slack water behind them pose "no jeopardy" to the salmon and to devise short-term and long-term strategies for salmon recovery based on the fact the hydropower system kills juvenile salmon by the millions.

"The claim that this system doesn't pose jeopardy to the salmon is ludicrous," commented Andrus. "The federal agencies are setting us on a course of action that is bad for Idaho, bad for the region and bad of the fish. Their opinion fails to address the problem at its source: the mainstem dams."

Shortly after the passage of the Magnuson Act and the formation of the regional fishery councils in 1976, PCFFA was telling both the Pacific Fishery Management Council, NMFS and the Congress that the impacts of the dams on the fish had to be addressed, curtailing fishing effort would not save the stocks. To date, NMFS has done little but curtail salmon fishing effort under its trust responsibility to conserve and manage these runs. Now the Snake River runs are listed and on the verge of extinction and other Columbia River salmon stocks are at risk.

In its complaint, Idaho alleges that:

- by NMFS' own admission, the mortality of juvenile spring/summer king salmon from hydroelectric-generation causes is from 55 to 76%;
- the hydropower actions affect the species but the agency's "consultation" of ways to bring back the salmon is limited in a way that does not consider longer-range recovery alternatives such as modifying the dams to accommodate juvenile fish passage.
- the federal hydroelectric generating system was begun last spring without an operational plan for NMFS.

PCFFA and a number of other fishery groups are presently considering whether to sign on the lawsuit against NMFS and the other federal agencies as co-plaintiffs or friends of the court. The Idaho complaint says exactly what fishing groups have been saying for over a decade -- the dams are the problem.

"This federal policy threatens the salmon with extinction," said Idaho Attorney General Larry EchoHawk, referring to the FCRPS 1993 operation. "We need this suit to force the agencies to face up to their obligation to provide a safe migratory rout for all the salmon."

The Snake River Salmon Recovery Team, meanwhile, is headed by the University of Washington's Dr. Don Bevan, and consists of Dr. Peter Bergman (formerly with the Washington Department of Fisheries), Dr. Ted Bjornn (University of Idaho), Dr. John Harville (former executive director of the Pacific States Marine Fisheries Commission), Dr. Jim Crutchfield (formerly with the University of Washington), Dr. and Peter Klingeman (Oregon State University). While the Recovery Team is filled with a number of well-known names in salmon management, critics have described it as "the same tired old white men" who are part of the problem -- "fisheries' own Flat Earth Society" -- the academics and bureaucrats who sought to manage fish by managing fishermen, ignoring the destruction of the dams and habitat loss.

#### NMFS WITHHOLDING OF FUNDS THREATENS WINTER-RUN PROGRAM

The National Marine Fisheries Service is refusing to release \$500,000 in funds to the University of California's Bodega Bay Marine Laboratory which is engaged in a 10 year effort at raising Sacramento winter-run king salmon to maturity as part of a captive brood stock program aimed at protecting the threatened species from extinction and "jump starting" its recovery. Last year Congress appropriated the funds for the program, but NMFS has refused to release them to the Bodega Bay facility, jeopardizing the continued existence of the program.

Currently a portion of the winter-run taken at the Coleman National Fish Hatchery at Anderson (on Battle Creek, a tributary of the Sacramento River) are held back for the captive brood stock program. The remainder are released into the river as juveniles where they are intended to migrate to the ocean. The fish that are held back are sent to salt water facilities at the Bodega Bay laboratory and the California Academy of Science's Steinhart Aquarium in San Francisco. These fish, once they are sexually mature, will be sent back to Coleman Hatchery where they will be spawned and their progeny released into the wild.

California Congresswoman Nancy Pelosi (D-San Francisco) currently is carrying legislation, H.R. 2457, the Winter-Run Chinook Captive Broodstock Act of 1993 (see FRIDAY, 6 August, p.2), to continue the program. That bill is still awaiting a hearing by the House Merchant Marine & Fisheries Committee. The success for now of the program, however, is tied to NMFS' release of the funds already appropriated.

*"We must be in touch with our own liberating ludicrousness and practice being harmlessly deviant".....Sarah J. McCarthy*

## SACRAMENTO-SAN JOAQUIN DELTA - BLACK HOLE FOR SALMON?

California's Central Valley river system -- the south flowing Sacramento and the north flowing San Joaquin and their tributaries -- constitutes the second largest salmon producing watershed -- second only to the Columbia-Snake system -- in the lower 48. The salmon producing capacity of this system has been vastly limited as a result of dams and other habitat degradation reducing salmon spawning habitat from 6,000 miles historically to less than 500 miles today. The upstream habitat losses and diversions, however, may only be part of the problem. Recent studies by the California Department of Fish & Game indicate the Sacramento-San Joaquin Delta is a virtual "black hole" for downstream migrating juvenile salmon.

In response to an inquiry from Shel Meyer regarding the use of radio-tagged steelhead trout as an "indicator fish" to research where fall-run chinook salmon were disappearing, the Department of Fish & Game in a 9 August letter describes the findings of their studies to date regarding out-migrating juvenile salmon losses in the Delta. Meyer is president of NorCal Fishing Guides & Sportsmen's Association and chairman of the Central Valley Fisheries Coalition. Steelhead were suggested as an "indicator" species since they are not taken in the ocean fishery. In the letter to Meyer, Department of Fish & Game Deputy Director Al Petrovich said:

"Currently, salmon losses occurring within the interior Delta are being studied. In 1992, 300,000 fall-run coded-wire tagged (CWT) smolts were released in the northern Delta on the Sacramento River at Ryde and at Georgiana Slough. The survival rates of fish released at Ryde and at Georgiana Slough. the survival rates of fish released at Ryde were about 5 times greater than those of the corresponding groups of fish released into Georgiana Slough. The experiment was repeated in 1993 with preliminary results supporting the finding of 1992: high losses of fish diverted through Georgiana Slough.

"An additional release of 50,000 CWT salmon was made approximately 10 miles from the State and Federal fish facilities. None of these fish were recovered at Chipps Island, which is downstream from the confluence of the Sacramento and San Joaquin rivers. Less than one thousand of these salmon were accounted for at the State and Federal pumping facilities in the South Delta. This information suggests that high losses are occurring within the interior Delta prior to the fish reaching the pumping facilities."

The State Water Project and Central Valley Project facilities, during times of high water diversions from the Delta, actually reverse the flow drawing it southward, instead of westward to San Francisco Bay and the Pacific. The downstream migrating salmon smolts naturally follow the flow, but instead of reaching the bay and ocean are sucked into the inner Delta where they become disoriented and lost to predators or at the pumps. Fish & Game's study results indicate that upstream habitat fixes will have little benefit absent a fix of the Delta problem.

*"Government is a health hazard. Governments have killed many more people than cigarettes or unbuckled seat belts ever have"....P.J. O'Rourke*

10 September 1993

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## FISH &amp; GAME PRESENTS CENTRAL VALLEY SALMON RESTORATION PLAN

At the 27 August Fish & Game Commission meeting in Sacramento, the Department of Fish & Game presented an overview of its "Central Valley Anadromous Fisheries & Riparian Wetlands Habitat Protection & Restoration Action Plan". A draft of the document is currently sitting on Director Boyd Gibbons' desk awaiting his approval for release. According to Fish & Game, the "action plan summarized the current status of the anadromous fishery and riparian resources, sources of restoration funds, the present restoration program, and individual stream actions for 27 Central Valley stream. These individual stream plans describe habitat problems and recommended restoration, regulatory/administrative, and evaluation/monitoring actions which will restore fishery and riparian resources of the Central Valley."

For more information on the plan, or a copy if and when it becomes available, contact the Inland Fisheries Division, Department of Fish & Game, 1416 Ninth Street, Sacramento, CA 95814, Tel: (916) 653-6194.

## PACFISH STANDARDS COMING IN OCTOBER

After months of scientific assessment, the PACFISH strategy report is scheduled to go to the Chief of the U.S. Forest Service and Director of the Bureau of Land Management on 29 September, for final approval and publication in the Federal Register sometime in October or early November. PACFISH is the management strategy of these agencies to protect the remaining anadromous salmonid species on federal lands, and is the basis for the riparian protection sections of the earlier Scientific Analysis Team (SAT) and Forest Ecosystem Management Assessment Team (FEMAT) reports upon which the President's Forest Plan is based. It is also the most proactive fish protection measure to come out of these agencies, and is being implemented in an effort to stem the tidal wave of salmon extinctions (caused by extensive habitat losses throughout the Pacific Northwest) which has been devastating the salmon fishing industry.

In all designated "key watersheds" on federal lands, PACFISH will impose minimum 300 feet Riparian Habitat Conservation Areas (RHCA's) as no-harvest buffer zones around fish-bearing streams and lakes, with 150 foot zones around non-fish bearing streams or wetlands of more than one acre, and 100 foot zones around intermittent streams and wetlands of less than one acre. In non-key watershed areas RHCA's could be changed only after a complete watershed analysis has been done to justify lesser standards, and could also be expanded as necessary to protect fish-bearing streams and stream resources.

PACFISH is expected to into effect immediately upon publication for the states of California, Oregon, Washington, Idaho and Alaska as "interim rules" for 18 months until the National Environmental Policy Act (NEPA) process can be completed. This is in response to problems being created by planned federal timber sales in key watersheds which would violate the President's Forest Plan (not yet binding) but, nevertheless, would comply with old rules.



There is concern that Senator Ted Stevens (R-A), through a last minute "consent calendar" amendment in the Interior Appropriations Committee process, will propose language prohibiting BLM and USFS from expending funds to implement the PACFISH fisheries habitat conservation strategy in Alaska, thereby threatening salmon stocks within the Tongass National Forest. Alaska groups and PCFFA are opposing any such exemption.

PCFFA Northwest Director Glen Spain, who deals extensively in forest issues notes that the PACFISH riparian standards are a vital element in protecting the remaining salmon stocks along the U.S. Pacific Coast. An exemption for the Tongass would simply increase pressure from habitat loss on Alaska stocks, sending them rapidly along the same path of decline as most salmon stocks in the lower 48. One exemption may also lead to others, until the PACFISH strategy is riddled with habitat holes in which many salmon stocks have little protection.

Fishermen and fishing groups are urged to contact their Senators and Representative to protest any exemption in the Senate version of the Interior Appropriations bill and support the PACFISH language currently in the versions of both houses. The issue will be resolved in the Interior Appropriations Conference Committee by the end of September. Pacific Coast members of the Conference Committee include: Senators Patty Murray (D-WA), Ted Stevens (R-AK), Slade Gorton (R-WA) and Mark Hatfield (R-OR), and Representatives Norm Dicks (D-WA) and Ron Packard (R-CA).

#### AGREEMENT REACHED TO INCREASE SPAWNING ON CONNECTICUT RIVER

An agreement has been reached between the Organization of Hunters & Fishermen in Greenland and the National Fish & Wildlife Foundation, the North Atlantic Salmon Fund and the Atlantic Salmon Federation for Greenland fishermen to halt the netting of Atlantic salmon for two years. In return the US-based groups will pay the fishing organization \$400,000 each year. The agreement is intended to increase spawning escapement of Atlantic salmon into the Connecticut River, as well as the Merrimack and the Down East. In 1991 only 223 spawning salmon returned to the Connecticut, once the largest salmon producing river on the Eastern Seaboard. Habitat destruction and pollution have been the two largest factors contributing to the decline of US-origin Atlantic salmon. The two-year halt of Greenland's salmon net fishery is also expected to increase spawners in Canadian and European rivers.

#### CVPIA IMPLEMENTATION

Following the passage last year of the Central Valley Project Improvement Act, Title 34 of P.L. 102-575 (see FRIDAY, 6 November 1992, pp.1-2), it was anticipated that half the battle had been won to reform the operations of the federal water project that had devastated salmon populations throughout the Central Valley and the Trinity River. The other half of the battle would have to be fought implementing the legislation; that is, making sure the bureaucracy carried out the law as intended by Congress. In the case of the CVPIA that includes operating the project to protect fish and wildlife, providing a minimum of 800,000 acre-feet more water for fish and wildlife, and doubling Central Valley fish populations. continued on p.11

NAME: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

June 7, 1993

# PL 102-575 Title 34 Implementation Actions

| Reference         | Description of Action   | Keep on<br>Mailing List<br>for Updates<br>on these<br>Issues<br>(a) | Want to get<br>involved in<br>these<br>activities<br>(b) |
|-------------------|---|---|--|
| 3404<br>(a)(b)(c) | CONTRACT LIMITATIONS, REFORM, LONG-TERM RENEWALS  |   |  |
| 3404<br>(c)(1)(2) | Interim Contract Renewals.  |   |  |
| 3404 (c)(3)       | Mitigation & restoration payments.  |   |  |
| 3405 (a)          | WATER TRANSFERS, IMPROVED WATER MANAGEMENT & CONSERVATION                                   |   |  |
| 3405 (b)          | Requirement for measuring devices.  |   |  |
| 3405 (c)          | Water quality standards compliance requirements.  |   |  |
| 3405 (d)          | Tiered pricing requirements.  |   |  |
| 3406 (a)          | AMEND CVP AUTHORIZATIONS  |   |  |
| 3406 (b)          | Operate CVP to meet all obligations under state and Federal law and all decisions of SWRCB. |   |  |
| 3406 (b)(1)       | Program to double natural anadromous fish populations.                                      |   |  |
| 3406 (b)(2)       | Dedicate 800,000 acre-feet of CVP yield for fish and wildlife.                              |   |  |
| 3406 (b)(3)       | Program to acquire water beyond 800K for fish and wildlife.                                 |   |  |
| 3406 (b)(4)       | Program to mitigate for fish impacts at Tracy.  |   |  |
| 3406 (b)(5)       | Program to mitigate fish impacts at Contra Costa Pumps.                                     |   |  |
| 3406 (b)(6)       | Temp control device at Shasta.  |   |  |
| 3406 (b)(7)       | Meet flow standards and objectives and diversion limits.                                    |   |  |
| 3406 (b)(8)       | Pulse flows.  |   |  |

(a) Check this column if you wish to continue to receive periodic updates, newsletters, etc., about these issues.

(b) Check this column if you are interested in becoming more actively involved in actions associated with Title 34 implementation.

| Reference       | Description of Action   | <input checked="" type="checkbox"/><br>Keep on<br>Mailing List<br>for Updates<br>on these<br>Issues<br><br>(a) | <input checked="" type="checkbox"/><br>Want to get<br>involved in<br>these<br>activities<br><br>(b) |
|-----------------|---|--|---|
| 3406 (b)(9)     | Program to eliminate anadromous fish impacts caused by flow fluctuations.                             |  |   |
| 3406 (b)(10)    | Program to minimize fish passage problems at Red Bluff Diversion Dam.                                 |  |   |
| 3406 (b)(11)    | Rehabilitate Coleman.   |  |   |
| 3406 (b)(11)    | Keswick Dam Fish Trap Modification.   |  |   |
| 3406 (b)(11)    | Modify Basin below Keswick Dam Spillway.  |  |   |
| 3406 (b)(12)    | Program to improve salmon & steelhead pops in Clear Creek. New fish ladder at McCormick-Saeltzer Dam. |  |   |
| 3406 (b)(13)    | Program to replenish spawning gravel; reestablish meander belts; reduce habitat loss.                 |  |   |
| 3406 (b)(14)    | Program to modify operations and improve Delta Cross Channel, Georgiana Sl. facilities.               |  |   |
| 3406 (b)(15)    | Construct/operate barrier at head of Old River.   |  |   |
| 3406 (b)(16)    | Program to monitor fish and wildlife to assess results of actions outlined in 3406.                   |  |   |
| 3406 (b)(17)    | Program to resolve fish passage at ACID.  |  |   |
| 3406 (b)(18)    | Assist CA to improve striped bass fishery.  |  |   |
| 3406 (b)(19)    | Reevaluate existing operational criteria for reservoir carryover.                                     |  |   |
| 3406 (b)(20)    | Participate in efforts to mitigate fish impacts of Glenn-Colusa ID.                                   |  |   |
| 3406 (b)(21)    | Screen existing diversions.   |  |   |
| 3406 (b)(22)    | Program to flood fields for waterfowl.  |  |   |
| 3406 (b)(23)(A) | 340k A.F. Instream release to Trinity from 92 to 96.  |  |   |
| 3406 (b)(23)(B) | Instream Trinity releases after 1996.   |  |   |
| 3406 (c)(1)     | Comprehensive plan for San Joaquin River.   |  |   |
| 3406 (c)(2)     | Determine existing and future Stanislaus River basin needs.   |  |   |

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(b) Check this column if you are interested in becoming more actively involved in actions associated with Title 34 implementation.

| Reference      | Description of Action   | ✓<br>Keep on<br>Mailing List<br>for Updates<br>on these<br>issues<br>(a) | ✓<br>Want to get<br>Involved in<br>these<br>activities<br>(b) |
|----------------|---|--|---|
| 3406 (d)(1)    | Provide level 2 supplies to waterfowl refuges.  |  |   |
| 3406 (d)(2)    | Provide level 4 supplies to waterfowl refuges.  |  |   |
| 3406 (d)(2)    | Acquire level 4 supplies, 10% per annum.  |  |   |
| 3406 (d)(5)    | Construct or acquire conveyance facilities, capacity and wells.                                     |  |   |
| 3406 (d)(6)(A) | Investigate and report on means of improving reliability and quality of water for private wetlands. |  |   |
| 3406 (d)(6)(B) | Investigate and report on the water supply and means to deliver water to 120,000 acres.             |  |   |
| 3406 (e)(1)    | Report on measures to maintain temps in Sacramento, San Joaquin and Delta.                          |  |   |
| 3406 (e)(2)    | Opportunities for additional hatchery production.   |  |   |
| 3406 (e)(3)    | Evaluation of migration barriers and screening programs in the Central Valley.                      |  |   |
| 3406 (e)(4)    | Evaluation of temperature control device at Trinity Dam.  |  |   |
| 3406 (e)(5)    | Evaluation of control structures at Delta Cross Channel and Georgiana Slough.                       |  |   |
| 3406 (e)(6)    | Eval of measures to protect, restore & enhance natural production of salmon & steelhead.            |  |   |
| 3406 (f)       | Report on Project Fishery Impacts of all impacts and who it affected.                               |  |   |
| 3406 (g)       | Ecosystem and Water Systems Operations Model.   |  |   |
| 3407 (a)(b)    | <b>ESTABLISH RESTORATION FUND</b>   |  |   |
| 3407 (c)(d)    | Mitigation and Restoration Payments by water and power beneficiaries.                               |  |   |
| 3407 (e)       | Funding to Non-Federal entities to implement authorized actions.                                    |  |   |
| 3408 (a)       | <b>DEVELOP REGULATIONS</b>  |  |   |
| 3408 (b)       | Use of Project Power for fish and wildlife purposes pursuant to this title.                         |  |   |
| 3408 (c)       | Contracts for additional storage and delivery of water.   |  |   |

(a) Check this column if you wish to continue to receive periodic updates, newsletters, etc., about these issues.

(b) Check this column if you are interested in becoming more actively involved in actions associated with Title 34 implementation.



| Reference | Description of Action  | ✓<br>Keep on mailing list<br>for updates<br>on these<br>issues<br>(a) | ✓<br>Want to get<br>involved in<br>these<br>activities<br>(b) |
|-----------|--|---|---|
| 3408 (d)  | Use of Project facilities for Water Banking.   |   |   |
| 3408 (h)  | Land Retirement  |   |   |
| 3408 (i)  | Water Conservation Projects  |   |   |
| 3408 (j)  | Plan to increase project yield   |   |   |
| 3409      | PROGRAMMATIC EIS ON IMPACTS AND BENEFITS OF TITLE 34   |   |   |
| 3411      | COMPLY WITH STATE LAW IN SECURING CHANGE IN PLACE OF<br>USE/PURPOSE OF USE. ALSO COMPLY WITH COA |   |   |
| 3411 (a)  | Modify water rights permits as needed  |   |   |
| 3411 (b)  | Comply with COA  |   |   |
| 3412      | EXTENSION OF T/C CANAL SERVICE AREA  |   |   |
| Comments: |  |   |   |

Please return this completed matrix to:

Bureau of Reclamation  
 Attention: MP-120  
 2800 Cottage Way  
 Sacramento, CA 95825-1898

(a) Check this column if you wish to continue to receive  
 periodic updates, newsletters, etc., about these issues.

(b) Check this column if you are interested in becoming more  
 actively involved in actions associated with Title 34  
 implementation.



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The U.S. Bureau of Reclamation, charged with the implementation of Title 34, has developed a matrix seeking public participation in a process that will take more than two years. A copy of the matrix is included in this issue of FRIDAY (pp.7-11) and readers having an interest in the salmon fishery are encouraged to fill it out and send it to the address listed on p.11.

In August, the U.S. Fish & Wildlife Service released its draft CVPIA "Plan of Action for the Central Valley Anadromous Fish Restoration; Program". USFWS is asking for comments by 24 September (in light of the salmon season ending on 30 September, USFWS still encourages fishermen to send their comments in, even if late). For a copy of the draft plan, contact Jim McKeivitt, Team Leader, Central Valley Fish and Wildlife Restoration Program, U.S. Fish & Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, CA 95815-1846, Tel: (916) 978-4613.

Public workshops are planned for the following dates and locations on the programmatic Environmental Impact Statement (EIS) for the CVPIA and the Plan to Restore Anadromous Fish:

**12 October**  
Fresno - Sheraton Smugglers Inn  
3737 N. Blackstone  
1330 - 1630 HRS - Anad. Fish  
1930 - 2200 HRS - Prog. EIS

**13 October**  
Oakland - Federal Building  
1301 Clay Street, Room ABC  
0900 - 1200 HRS - Anad. Fish  
1330 - 1630 HRS - Prog. EIS

**14 October**  
Red Bluff - Elks Lodge  
355 Gilmore Road  
0900 - 1200 HRS - Anad. Fish  
1330 - 1630 HRS - Prog. EIS

**20 October**  
Sacramento - Expo Inn  
1413 Howe Avenue  
0830 - 1630 - Prog. Wrkshp  
1830 - 2200 - Anad. Fish

**2 November**  
Fort Bragg - Salmon Trollers Hall  
North Harbor Drive  
1930 - 2200 HRS - Fish and EIS

For more information on the workshops, call either (800) 742-9474 or (916) 978-4417.

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#### NO WORD ON NMFS DIRECTORSHIP

The expected announcement of a new NOAA Assistant Administrator for Fisheries (director of the National Marine Fisheries Service) expected this week has not been made. The delay has led to speculation that the "certain" appointment of current NMFS Regional Director Rolland Schmitten may not be a certainty after all. In the meantime some eighty public officials, sport and commercial fishing

*"In the middle of difficulty lies opportunity".....Albert Einstein*

organizations, environmental groups and labor have barraged the White House with letters opposing Schmitten and calling for the appointment of fishery scientist Bill Kier instead (see FRIDAY, 20 August, pp.8-12; 9 July, insert).

In the last issue of FRIDAY, it was reported that the Washington-based Fishery Conservation Network endorsed Schmitten for the NMFS job. FCN has informed PCFFA that it has not endorsed Schmitten.

\*\*\*\*\*

#### **HERRING - SAN FRANCISCO BAY FISHERY WILL OPEN FOR 93-94 SEASON**

At its 27 August meeting in Sacramento, the California Fish & Game Commission voted to permit a small herring fishery this year in San Francisco Bay for a quota of slightly more than 2,000 tons, or approximately 10% of the spawning biomass. The Department had considered closing the fishery entirely this year due to a smaller population as a result of six straight years of drought and diversions, coupled with the mild El Nino. PCFFA argued for a small fishery, recognizing that it would not be a profitable one, to assure at least the fishery is open in the future, to prevent a further erosion of the fishery infrastructure in San Francisco Bay (e.g., loss of the last fish processor in Sausalito), and to aid the Department's stock assessment (by having fishermen on the Bay to work with Fish & Game's field biologists). In addition to PCFFA, fishermen speaking in favor of an opening were Lee Bradford, Tony Lonero, Ron Mangue and Andy Stock.

There were still some unresolved issues following the Commission's vote. They include the questions (1) whether three permittees will be allowed to team up; (2) whether those who choose not to fish will have their permit fee waived (in order to reduce the total number of participants); and (3) whether the round hauls (purse seines and lamparas) will be in the fishery. The Department has sought to eliminate this gear, by allowing permittees to transfer to the gillnet fishery, because of its take of sexually immature two and three year-old fish.

\*\*\*\*\*

#### **WATER - GCID BOARD RECALLED**

Members of the Glenn-Colusa Irrigation District voted to recall all five members of its Board of Directors this past month. Growers (mostly rice) had become increasingly unhappy with the intransigence of the GCID Board in dealing with fishery issues. The Board's relationship with fishery agencies was partially to blame for GCID's court-ordered shut-down to protect winter-run salmon. The Board's recent rejection of a proposed out of court settlement with the Department of Fish & Game on construction of new screens cost its members \$1.6 million, after the District lost in court (see FRIDAY, 9 July, pp.3-4). PCFFA and other fishery groups have worked closely with a number of GCID members on salmon conservation measures, including some who will be on the new board.

\*\*\*\*\*

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**NAMES TO NOTE - BOB BUGATTO DIES, BEATTIE TO HEAD USFWS.**

**BOB BUGATTO**, owner of California Shellfish Company (Cal Shell) died 21 August at the age of 68 in San Francisco. Through Cal Shell, Bugatto owned a number of other fish buying, processing and distribution facilities along the Pacific Coast, including Point St. George Fisheries in California and Hallmark Fisheries in Oregon. In 1980, he bought the Tides in Bodega Bay and turned the fishing buying facility, restaurant and motel into an upscale Inn. He is survived by his nephew Gene Bugatto who continues with Cal Shell.

President Clinton has named **MOLLIE BEATTIE** to become the first woman director of the U.S. Fish & Wildlife Service. Beattie was formerly Deputy Secretary of Vermont's Natural Resources Agency. **KEN SMITH**, a former aide to the President when he was Governor of Arkansas (Special Assistant for Natural & Cultural Resources), has been named deputy director of USFWS, an agency of the Department of Interior.

**RICHARD SPOTTS**, who for the past 14 years has served as Defenders of Wildlife's California Representative headquartered in Sacramento, announced in August his resignation to take a position with the Wisconsin Chapter of The Nature Conservancy. Spotts worked closely with a small group that included representatives of the Sierra Club, Mountain Lion Coalition, California Fish & Seafood Institute and PCFFA on legislation dealing with fish and wildlife.

Assistant Secretary of Commerce for Oceans & Atmosphere, Doug Hall (Deputy Administrator of NOAA), has named **KATE KIMBALL** to be NOAA's coastal official charged with getting various programs -- Coastal Zone Management, NMFS, Sea Grant, Strategic Assessments, etc. -- working together. Her title will be Deputy Assistant Secretary.

**PETE CHADWICK**, former chief of the California Department of Fish & Game's Bay/Delta & Special Water Projects Division, retired 31 July. Chadwick had been with the Fish & Game since 1956 and since 1966 was in charge of the Department's investigation's to determine how water projects affect the environmental resources of the San Francisco Bay/Sacramento-San Joaquin Delta ecosystem. Chadwick will remain as a special consultant to Governor Pete Wilson's Bay Delta Oversight Committee.

The Sierra Club Legal Defense Fund (SCLDF) San Francisco office recently lost its two research assistants assigned to work with fishing groups. **JONATHAN ROSENTHAL** and **MARY LAMMERT** left earlier this summer to work on graduate degrees at the University of Michigan. No replacements have been announced.

**WILL STELLE**, former counsel to the House Merchant Marine & Fisheries Committee has gone to work for Katie McGinty in the White House's environmental section. Stelle is also under consideration to head up the U.S. Environmental Protection Agency's office in Seattle.

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## *Half Moon Bay Fisherman's Marketing Association*

Annual Harbor Day  
Seafood Barbeque & Fish Fry

Pillar Point Harbor  
Saturday September 25, 1993

The Half Moon Bay Fisherman's Association, despite a dismal fishing season, is again hosting its annual Harbor Day Seafood Barbecue & Fish Fry at Pillar Point Harbor (Half Moon Bay). The entree for this year's festival includes barbecued salmon and albacore, deep fried rock cod and calamari, marinated calamari, shrimp cocktail and fresh corn-on-the-cob. There will also be a fishing derby for children 6 to 12. For more information, call (415) 726-1607. What a great way to spend the first Saturday in Autumn.

\*\*\*\*\*

### **ALBACORE - FAIR FISHING IN NORTH PACIFIC**

The Western Fishboat Owners Association (WFOA) reports the North Pacific albacore season, following a slow start, has improved with "fairly steady fishing on good size fish, an average of 18 pounds or more" west of 150 W. long. Fishing inside of 135 W. long. has been spotty and the fish size smaller than in the western area. To date most of the fish have been delivered, or shipped from coastal buying stations, to Pan Pacific, with less than 50 tons going to alternate markets (e.g., fresh market for retail and restaurant trade). According to WFOA, about 300 tons had been delivered by late August with a fair amount of albacore still aboard the off shore vessels.

WFOA represents Canadian, U.S., New Zealand and Western Pacific Island nation commercial albacore fishermen. For more information on albacore fishing and market conditions, contact: Western Fishboat Owners Association, P.O. Box 926, Dana Point, CA 92629, Tel: (714) 248-5355.

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### **GROUNDFISH - NMFS REIMPOSES WHITING TRIP LIMIT**

The National Marine Fisheries Service announced effective 4 September the re-imposition of a 10,000 pound trip limit on the take of Pacific Whiting offshore California, Oregon and Washington. For more information, call (310) 980-4034 or (206) 526-6140.

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## PCFFA CALENDAR

- 23-24 September, CALIFORNIA WATER LAW CONFERENCE, San Diego, CA.  
Info: (800) 873-7130.
- 25 September, ANNUAL HARBOR DAY - SEAFOOD BARBEQUE & FISH FRY,  
Half Moon Bay, CA. Info: (415) 726-1607.
- 2 October, COASTAL CLEANUP DAY, California. Info: (415) 904-5210.
- 6-8 October, OIL SPILL PREVENTION & RESPONSE EXPO, San Francisco, CA.  
Info: (800) 929-0553.
- 7-8 October, CALIFORNIA FISH & GAME COMMISSION MEETING, San Diego,  
CA. Info: (916) 653-4899.
- 10 October, SALMON UNLIMITED MEETING, Ukiah, CA. Info: (707) 462-5228  
or (415) 454-8498.
- 10-12 October, PACIFIC STATES MARINE FISHERIES COMMISSION ANNUAL  
MEETING, Post Falls, ID. Info: (503) 650-5426.
- 16-17 October, OREGON COAST & OCEAN CONFERENCE, Newport, OR. Info:  
(503) 223-9001.
- 20-23 October, FISH EXPO, Seattle, WA. Info: (207) 772-3005.
- 21-22 October, CALIFORNIA WATER POLICY III: BEYOND CONSENSUS, Los  
Angeles, CA. Info: (310) 494-1525.
- 21-23 October, GREEN PLANS FOR THE 21st CENTURY: THE PACIFIC RIM,  
San Rafael, CA. Info: (415) 454-3963.
- 25-26 October, PCFFA DIRECTORS MEETING, Sausalito, CA. Info: (415) 332-  
5080.
- 28-29 October, MANAGEMENT AND PROTECTION OF COASTAL AND NEAR-  
COASTAL WATERS: TOOLS FOR LOCAL GOVERNMENTS, Berkeley, CA.  
Info: (510) 286-0734.
- 4-7 November, THE FUTURE OF AMERICA'S RIVERS, Arlington, VA. Info:  
(202) 833-3380.

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**Pacific Coast Federation  
of Fishermen's Associations  
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P.O. Box 989  
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**FIRST CLASS POSTAGE - U.S.**

# BEHIND THE DAMS IS RESERVOIR OF POLITICS, SAY ENVIRONMENTALISTS

by Les Blumenthal

Washington - The Northwest has learned little from its ineffective handling of the spotted owl issue and is close to repeating the same tortuous mistakes as it focuses on their region's salmon runs, say environmentalists.

They fear that once again politics has taken precedence over science.

Most recently, environmentalists charge the National Marine Fisheries Service caved into political pressure from the Northwest congressional delegation led by House Speaker Tom Foley and ruled hydroelectric dams pose no threat to Columbia and Snake River salmon runs protected as threatened or endangered species.

Rollie Schmitten, regional administrator of the fisheries service, has admitted his agency was initially prepared to recommend that dam operations jeopardized the runs, but flip-flopped after dam operators agreed to increase water flows to help the migrating fish.

Environmentalists, however, believe Schmitten changed his mind not because of biological reasons but only after being bombarded by the region's lawmakers. Many of these Democratic lawmakers had helped Schmitten keep his job even though he is a product of the Bush Administration.

In fact, Schmitten was nominated Wednesday to head the entire agency.

While the lawmakers were relieved that Schmitten issued the so-called "no jeopardy" opinion, some are said to be a little miffed because its handling was too messy. No Democrats seem prepared to force Schmitten out, partially because they fear if he leaves office he might challenge freshman Democratic Rep. Jay Inslee in the 4th Congressional District.

Regardless of the suspected political intrigue, the NMFS decision has left environmentalists incredulous and ready to go to court again. Already two other salmon-related lawsuits are percolating through the federal courts - the same courts that have essentially shut down the forests of the Northwest to logging.

One of the lawsuits deals with the agency's previous no jeopardy opinion and the other with the controversial barging and trucking of salmon around dams.

"The federal managers are increasingly circling their wagons, and we feel excluded," said Lorraine Bodi, a lawyer with the regional office of American Rivers, a river conservation organization. "They seem to be following the path of the owl. Biologists are being cut out of the debate, and once again it's politics over science."

None of the salmon lawsuits is close to a climax, but Bodi and others believe the failure of the so-called Salmon Summit and the Northwest Power Planning Council to form a true regional consensus could mean a federal judge will plan the decisive role.

"There's no doubt it is going to spill into the courts," Bodi said.

Sometime this summer, an official recovery plan for the three protected Idaho runs will be released by a special team headed by Don Bevan, professor emeritus of fisheries and marine affairs at the University of Washington.

In little-noticed testimony before the House Merchant Marine & Fisheries Committee in late March, Bevan offered some hints of what the recovery team has in mind - and environmentalists don't like it.

Bevan said the team will recommend augmented river flows, through dam passage, planning and conduction of a drawdown experiment, control of predators, improved transportation, and design and construction of an upstream collector.

It is the last item that has really upset environmentalists.

"An upstream collector is necessary primarily to collect fish for monitoring and evaluation of changes in river conditions, but it might be linked to transportation at some future date," Bevan testified.

To environmentalists, that smacks of the 350-mile-long pipeline or canal the U.S. Army Corps of Engineers believes could be used to carry juvenile salmon downstream. The \$5.5 billion to \$6 billion project would have resting areas every 10 miles or so to imitate what were once the natural conditions of the rivers.

"It just goes to show to what extent people will go to avoid affecting the hydro system," said Karen Garrison, a scientist with the Natural Resources Defense Council who believes there is little evidence such an expensive proposition would even help restore the runs.

Environmentalists find laughable Bevan's comments that the National Marine Fisheries Service assume the central role in managing Columbia Basin anadromous resource to cut down on over-lapping jurisdictions. The environmentalists feel the fisheries agency, a once highly respected agency with top-notch scientists, was politicized during the Reagan and Bush administrations.

Environmentalists said they were also tired of assertions by Bevan and others that not enough is known about the runs to justify massive disruptions of the rivers.

"The views expressed by the scientists have been startlingly contradictory," Bevan testified. "One reason appears to be that scientific information is uniformly scanty and inconclusive, thus subject to broad interpretation."

Bodi finds such statements all too reminiscent of what people will say about the owl.

"We can literally study these fish to extinction if we continue on this path," she said. "Restoring the Columbia River salmon isn't impossible. We know how to do it."

Environmentalists are seeking \$77 million to lower the pool behind John Day Dam to produce 3 million acre-feet of water, increasing stream flows for the downstream migration of juvenile salmon. The money is needed to move irrigation pumps and redo fish ladders that would be left high and dry by such a drawdown.

With the House energy and water appropriations bill already through committee, environmentalists will ask Northwest senators to insert the \$77 million for the John Day Dam in the Senate version of the bill.

Overall, environmentalists believe that the entire hydro system could be "retrofitted" to be more salmon friendly for a cost of about \$1.3 billion. That would result in about a 5 percent increase in Bonneville Power Administration rates, said Bill Arthur of the Northwest Office of the Sierra Club.

"This is not a matter of economics," Arthur said. "They (BPA and the utilities) don't want to share control. It's their train set, and they don't want us to play with it."

Environmentalists also can up the ante by petitioning for the listing of even more salmon runs. The recent petition on mid-Columbia summer chinook was designed to "engage Washington state directly" in the dispute, Arthur said.

"If we can't reverse the decline of some of these runs in the next five years, we may never be able to," Bodi said. "Currently, there is no negotiating table, no place where this is being resolved, no place where biology is being considered."

Les Blumenthal covers matters of interest to Washington state and the Northwest in Washington, D.C.

**TESTIMONY OF  
THOMAS J. MURRAY**

**on Behalf of the**

**SEAFOOD CONSUMERS AND PRODUCERS ASSOCIATION, INC.**

**Regarding**

**REAUTHORIZATION OF THE MAGNUSON FISHERY  
CONSERVATION AND MANAGEMENT ACT**

**Presented to**

**THE SUBCOMMITTEE ON FISHERIES MANAGEMENT**

**of the**

**HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

**Washington, D.C.**

**September 29, 1993**

### SUMMARY OF POSITION

In the following statement, the Seafood Consumers and Producers Association, Inc. ("SCPA") expresses the view that the Magnuson Fishery Conservation and Management Act (the "Act") is not in need of major overhaul. Overall a period of statutory and regulatory stability would be desirable. However, SCPA does have some modest, specific suggestions for administrative and legislative improvements in several areas:

(1) With respect to the management of highly migratory species, SCPA is pleased that the National Marine Fisheries Service ("NMFS") has finally adopted internal procedures for such management, but it believes that provision needs to be made for the use by NMFS of formal advisory panels parallel to those used by the Regional Fishery Management Councils (the "Councils") and that Congress should direct the Administration to work on a priority basis within the International Commission for the Conservation of Atlantic Tunas to devise international management measures for Atlantic sharks.

(2) With respect to composition of the Councils and conflict of interest concerns, SCPA does not believe that any statutory changes are needed, although continued attention needs to be paid to ensuring that the Councils remain representative of constituent groups.

(3) With respect to the scientific support needed for management measures, SCPA urges that provisions be added to the Act requiring that (a) management measures be justified by the preponderance of evidence, (b) management measures be the least restrictive possible in terms of their impacts on participants, and (c) appropriate cost/benefit analyses be prepared for major allocation decisions.

(4) With respect to limited entry, SCPA suggests that a comprehensive review should be undertaken by a Limited Entry Review Commission which would report to Congress with concrete proposals to establish detailed procedures and standards for adoption and implementation of limited entry programs.



Testimony of

THOMAS J. MURRAY

on Behalf of the  
Seafood Consumers and Producers Association, Inc.

Regarding

Reauthorization of the Magnuson Fishery  
Conservation and Management Act

Presented to the  
Subcommittee on Fisheries Management

of the  
House Committee on Merchant Marine and Fisheries

Washington, D.C.  
September 29, 1993

Good afternoon. My name is Tom Murray. I am pleased to appear before the Subcommittee today to present the views of the Seafood Consumers and Producers Association, Inc. ("SCPA") concerning the reauthorization of the Magnuson Fishery Conservation and Management Act (the "Act"). As I will explain, SCPA does not believe that a major overhaul of the Act is warranted at this time, but we would suggest some modest changes that we believe would help enhance its effectiveness.

SCPA, which is headquartered in Tampa, Florida<sup>1</sup>, is a non-profit association of businesses and consumers interested in the renewable harvest of U.S. fisheries. Representing companies involved in all aspects of U.S. fish and seafood supply, SCPA provides research and government relations in support of industry and consumer objectives. In particular, over the past two years, SCPA has been deeply involved in the efforts by the National Marine Fisheries Service ("NMFS") to manage the Atlantic shark fishery under the Act.

Our experience leads us to conclude that, on balance, the Act is workable. The problems which we see are more in the implementation of existing Congressional mandates than in the statutory framework itself. Indeed, in some sense it may not be productive to adopt major legislative changes every two to four years, as has been the case since the inception of this law. Rather, there is something to be said for having a stable statutory structure. A stable structure would allow businesses better to plan effectively for the future. It would also leave NMFS and the Regional Fishery Management Councils (the "Councils") time to grapple with the day-to-day details of fishery management in a consistent fashion, free from difficult and time-consuming adjustments to new statutory objectives, standards and procedures.

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<sup>1</sup>SCPA's address and telephone number are: P.O. Box 25954, Tampa, Florida 33622-5954; (813) 949-8926.

In my testimony today, I will focus on four areas of concern to SCPA and of interest to this Subcommittee: (1) the management of highly migratory species; (2) Council composition and conflict of interest concerns; (3) requirements to ensure stable, scientifically justifiable regulatory programs; and (4) criteria for limited entry programs. In these areas, I will try to give you a sense of what SCPA sees as right and wrong in the current implementation of the Act and, even with our preference for stability, recommend several administrative and legislative changes aimed at improving fisheries management.

#### I. Management of Highly Migratory Species

The current statutory framework for the management of highly migratory species was put in place in November, 1990, just a little less than three years ago. In our judgment, Congress, after a long and difficult debate, made essentially the right choices then. In particular, it properly decided that the Secretary of Commerce (the "Secretary"), not the Councils, should be responsible for highly migratory species management on the East and Gulf Coasts and in the Caribbean. It is just too cumbersome to vest such management responsibility in the five cognizant Councils, and the balancing of the diverse geographic and economic interests is best done in a centralized decision-making process. SCPA would not like to see for other highly migratory species a repeat of the billfish management process, which was perhaps the most costly of any Federal fishery management plan ("FMP"), took

some ten years to complete and resulted in the complete elimination of the commercial sector.

At the same time, SCPA strongly believes that the Act as currently written properly recognizes the international context in which domestic highly migratory species management must take place. It would both be unfair and achieve little in the way of conservation to impose the brunt of the regulatory burden for an Atlantic-wide resource on U.S. fishermen alone. Consequently, the Act's provisions in Section 304(f)(3)(C)(iv) for minimizing any "disadvantage" of U.S. fishermen vis a vis their foreign competitors, in Section 304(f)(3)(D)(iii) for promoting "international conservation" and in Section 304(f)(3)(E) for allowing U.S. fishermen a "reasonable opportunity" to harvest any international allocation or quota are essential to the harvesting sector and should not be weakened in any way.

Unfortunately, with respect to the Atlantic shark fishery -- the first fishery managed by a new plan under the Act's highly migratory species authority -- the law has not worked as well as it should have. First, the plan was developed without NMFS having adopted general procedures for highly migratory species management under the 1990 amendments to the Act, with the result that the process was confused at best and at worst lacking in appropriate, institutionalized channels of advice to the Secretary. Second, because the United States has not achieved an international agreement on shark management, other nations, such as Cuba, Mexico and Canada, which fish the same stocks but are not subject to similar

restrictions, are able to fill the void in the fresh fish market during the extended periods of closure under the U.S. quotas. In short, the U.S. regulations effectively result in the transfer of economic benefits derived from the shark fishery to foreign competitors, with little or no increased conservation of the resource itself. Third, even as NMFS is moving forward today in a scoping process for revised shark management measures, it still often appears to be proceeding in an ad hoc fashion. While SCPA is pleased that last week NMFS finally issued its long-awaited generic highly migratory species management procedures, under current law it lacks the authority (which the Councils have) to create formal advisory panels, exempt from the Federal Advisory Committee Act ("FACA"), to provide recommendations to the agency, and it is not certain that basic stock assessment documents, such as the annual Stock Assessment and Fishery Evaluation ("SAFE") report, will be prepared, as required, in a timely fashion. |

While the problems just identified do not appear to warrant major statutory changes, SCPA nonetheless has two recommendations to seek to remedy deficiencies in the current management framework. First, even though the issuance of the new highly migratory species management procedures may help remedy some of the past process deficiencies, SCPA believes that statutory provision should be made for the creation by the Secretary of FACA-exempt advisory bodies, such as the Plan Teams, Scientific and Statistical Committees and Advisory Panels used by the Councils, to ensure that regularized channels for the provision of advice exist. These advisory bodies should be subject to operational guidelines



essentially identical to those set out in Section 302(j) of the Act. Second, Congress needs to direct that the United States should on a priority basis work through the International Commission for the Conservation of Atlantic Tunas ("ICCAT") to devise meaningful international management measures for Atlantic sharks and that domestic measures be modified thereafter to be consistent with the international regime. This is necessary to ensure, as Congress intended in 1990, a level playing field for U.S. harvesters and their foreign competition.

## **II. Council Composition and Conflict of Interest Concerns**

Congress made laudable efforts in its 1986 and 1990 amendments to the Act to alter the Act's appointment provisions and seek to remedy imbalances of constituent representation on the Councils. SCPA believes that these initiatives have had some positive impact in the Southeast. It also believes that, short of the most excruciatingly detailed seat-by-seat prescriptions for Council appointments, perfect balance is never going to be achieved. Moreover, the reality is that, whatever the Act says, the appointments process is and always will be political. Consequently, SCPA cannot envision a productive way further to "fine tune" the appointment process.

There is one troubling trend in the appointments process, however, which at least deserves note. Of late it has been increasingly common to see more appointments of academic experts, such as biologists and economists, to the Councils. Perhaps such appointments reflect a reaction to complaints about conflict of interest. Many of the appointments, moreover, are of highly competent individuals. However, SCPA believes that, where there is a need for expert advice and analysis, it should for the most part be obtained through the advisory committee process. The Councils themselves should remain primarily representative of participants in the fisheries and other interested constituent groups. Otherwise, Congress might just as well turn management over to the Secretary and NMFS.

It may be claimed, of course, that continued emphasis on interest group representation on the Councils will exacerbate perceived problems of conflict of interest, about which much has been said in prior hearings before this Subcommittee. Frankly, SCPA does not view conflict of interest as a major problem in the Southeast. In any event, imposition of strict conflict of interest requirements would hamstring the Councils. Moreover, the difficulties in drafting workable and fair conflict of interest provisions are formidable. For example, SCPA firmly contends that there are many conflicts that are not financial in nature. Recreational fishermen may vote to promote the recreational interest, employees of environmental organizations are under pressure to adhere to their organizations' positions and State Directors are constrained to hew to State-established policy. It would be manifestly unfair to prohibit, say, a commercial snapper-grouper fisherman from voting but allow his

recreational counterpart to do so. In short, unless Congress is prepared to abandon the current system in which a Council actually devises management measures and is not merely advisory, Congress must accept that a certain amount of "conflict of interest", broadly defined, is inherent in the Council process. It is in fact just part of the price which must be paid for keeping regulatory decision-making close to those most directly affected by fishery management measures.

### III. Requirements for Stable, Scientifically Justifiable Regulation

The Southeast is for the most part dominated by well-established fisheries. In recent years, rather than experiencing explosive or uncontrolled growth, these fisheries have been marked by a levelling of effort. All major fisheries are under management. Furthermore, I can think of no example where the excess capital has not largely been bled out of the fisheries over the past decade.

In such circumstances, notwithstanding the natural desire of the Councils perpetually to justify their existence by amending FMPs, there is not a need for new limited entry programs or major shifts in the approach of the Councils and NMFS to the conservation of the resource. Rather, to the extent possible consistent with the dynamic nature of fisheries, some period of stability in regulation would be desirable. Management measures need to be

kept in place, not continually modified every year, until we have a solid scientific data and information base to indicate whether existing measures are working or whether change is truly warranted. The NMFS effort at this time should be concentrated on producing the best science possible, not inventing and seeking to implement newer and ever more creative management tools. The stable regulatory environment that hopefully would result would allow for the first time businesses to operate with a planning horizon beyond the next Council meeting.

Having posited the desirability of a stable regulatory climate, SCPA of course must acknowledge that some change will always be necessary in dealing with a resource as volatile as fisheries. In order to make sure that these new management measures are sensible, however, SCPA would suggest three modest ways in which the Act could be altered to improve the quality of decision-making. Hopefully, if adopted, these alterations would produce a degree of confidence in Council and NMFS decisions that has sometimes been lacking in the past.

First, SCPA would advocate an amendment to Section 303 of the Act requiring that FMPs and implementing regulations be supported by a "clear preponderance of evidence in the record." Too often in the past Councils have been comfortable taking action based on limited or conflicting evidence, knowing that only a minimal record in support of a chosen action would be sufficient to sustain it if challenged in court. The thrust of the amendment

we propose would be to depoliticize Council action, require that it be based on the weight of the scientific evidence and help reduce the risk of arbitrary and capricious decisions.

Second, SCPA would propose another amendment to Section 303 of the Act requiring that FMPs and their implementing regulations be "the least restrictive available in terms of their impacts on participants in the fishery." Because of the wide array of regulatory options available to the Councils and the Secretary and the lack of existing restrictions on the choices made among them, we have seen numerous examples of draconian regulation unnecessary to achieve basic fishery management goals. Gear types, for example, may not have to be eliminated altogether from a fishery to reduce conflict or prevent overfishing. Yet, in the case of fish traps and drift gill nets, to name just two cases, they have been, destroying livelihoods in the process. A "least restrictive alternative" requirement would help reduce the risk of severe dislocation as a result of new management measures.

Third, where the Councils or the Secretary are considering allocation decisions with major economic ramifications, the Act should require circulation and consideration in an open, public process, with provision for public comment and peer review, of a cost/benefit analysis which would detail the true economic impacts of management alternatives. In the absence of such analysis, FMPs have gone as far as "decommercializing" an entire fishery, such as that for Atlantic billfish, on "net benefit" grounds, with little but a vague, qualitative



assessment to support such a result. This kind of decision-making is the sort that undercuts the credibility of fisheries management and should not be permitted in the future.

#### IV. Criteria for Limited Entry Programs

It follows from what I have said that SCPA does not believe a major effort needs to be undertaken to devise limited entry programs for the fisheries in the Southeast. Still, moratoria on entry, Individual Transferable Quotas ("ITQs"), Individual Fishing Quotas ("IFQs") and the like are the fashion of the day. If the present NMFS policy continues, certainly there will be pressure on the Councils to move in this direction. In these circumstances, where the traditional open access fishery may be abandoned, the one thing SCPA strongly believes is that the rules for development of such programs must be much clearer than they are today.

Currently, the Act says almost nothing about the nature and scope of, and requirements for, limited entry programs. Section 303(b)(6) is the only provision of the Act that speaks expressly to considerations applicable to the establishment of limited entry schemes, and it is permissive in nature, allowing such establishment simply as long as certain specified factors are "take[n] into account." The National Standards Guidelines say little useful about such schemes. Not surprisingly in such circumstances, the two decided court

cases (in the Atlantic surf clam and Pacific whiting fisheries) uphold the broad discretion of the agency in this area. At present, each Council can proceed more or less as it wants, and there is no consistency region-to-region or fishery-to-fishery.

SCPA views it as essential, when the Councils and NMFS are creating and allocating economic rights and potentially conferring substantial wealth on selected fishery participants, that they do so under clearly articulated standards designed to assure that the value of United States fisheries, consistent with sound conservation principles, is achieved. Otherwise, the prospect of abuse, and enriching one user group or entity at the expense of another, is all too real. SCPA does not at this point have specific recommendations for such standards. We would suggest that this is an area where a comprehensive review is required, perhaps by a statutorily-mandated, independently-appointed Limited Entry Review Commission, which could then report to Congress within a fixed period with concrete proposals for statutory modification. Such an approach seems best designed to produce a rational framework for carrying out fundamental change in the way most fisheries are managed.

### Conclusion

In sum, while fisheries management will always be controversial and while endless changes to the Act could be proposed, SCPA does not believe that now is the time for a systemic overhaul. If anything, what is needed is more of a "breather", with increased

attention over the next few years to learning to live with and properly implement much of the management program that is now in place. Such a period of stability, coupled with the several changes we have noted that would help improve the quality of regulatory decisions and a review of the parameters for limited entry, would do much to ensure that both the fishermen and the fish survive and prosper.

Thank you for the opportunity to appear before you today. I would be most happy to answer any questions that you may have.

*Hoopa Valley Tribal Council*

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

## HOOPA VALLEY TRIBE

Regular meetings on 1st & 3rd  
Thursdays of each MonthDale Risling  
Chairman

## Statement of

PLINY MCCOVEY, VICE-CHAIRMAN  
HOOPA VALLEY TRIBEBefore the  
Subcommittee on Fisheries Management  
of the  
Merchant Marine and Fisheries Committee  
on the  
Reauthorization of the  
Magnuson Fishery Conservation and Management ActSeptember 29, 1993  
Washington, D.C.

Mr. Chairman, on behalf of the Hoopa Valley Tribe, I express my appreciation for the opportunity to appear today and present this statement to the Subcommittee in its deliberations on reauthorization of the Magnuson Fishery Conservation and Management Act.

Earlier on August 4, 1993, I testified on this matter before the Senate Commerce, Science and Transportation Committee. A copy of that statement is attached for your convenient reference. In our Senate testimony, we focused on the structure of the Regional Fisheries Management Councils, and proposed that the reauthorized act include provision for tribal representation on the Pacific Council. We renew that request here.

The Hupa people have inhabited the Klamath River region of northern California for over 10,000 years. Over this period, the Hupa people have depended upon the anadromous fishery resources of the region for sustenance, ceremony and commerce. The Tribe maintains a reserved fishing and water rights to these resources which are held in trust by the United States of America.

The Magnuson Act consolidated management of numerous marine fish for the exclusive benefit of Americans. Included in this broad authority are the anadromous fishery resources of the Klamath River Basin. The Hoopa Valley Tribe has participated in the annual management process of the Pacific Council by providing testimony and salmon fisheries data. In addition, the Tribe holds a seat on the Klamath Fishery Management Council, an adjunct body providing regional salmon harvest allocation recommendations and technical support to the Pacific Council.

The Tribe's considerable experience in management of the Klamath River fall chinook has convinced it that the current management program under the Magnuson Act has not provided for the basic conservation needs of the fishery itself, let alone a meaningful opportunity for a sustained and productive economic use of the fishery resource.

The purpose of this statement is to urge the Congress to reauthorize the Magnuson Act and in doing so provide more explicit direction to federal officials about management of fisheries in time of low stock abundance. In our view, the policy of the Magnuson Act to achieve optimum yields from fishery resources has to be reconsidered. In periods of low stock abundance, which have persisted for years in the Klamath River Basin, the current management scheme has effectively ignored the national fishery

Statement of Pliny McCovey  
September 29, 1993  
Page 2

standard that forbids conservation and management measures to have economic allocation as its sole purpose (16 U.S.C. § 1851(5)). In our view, the biological data is compelling in its message that fishing into the declining population of natural spawners in disregard of the minimum escapement floors established by fishery management plans could cause irreparable harm to the long term productivity of the fishery resource.

By letter of September 10, 1993, to the Secretaries of the Interior and Commerce (copy attached) we proposed that the PFMC's management plan for 1994 include a provision for a concept we call "spawner deficit accounting." While we believe that there is a particularly urgent need for deficit accounting in management of Klamath fall chinook, it is a concept that makes sense for all fisheries. Essentially, spawner deficit accounting would require that in any year in which spawner escapement did not meet or exceed the escapement floor in a fishery management plan, the difference between the actual escapement and the floor would be counted as an offset and added to the escapement floor for the following year. In other words, spawning escapement below the floor in one year would result in a supplemental escapement the following year. We propose that spawner deficits not cumulate from year to year. Nor would a supplemental escapement be permitted to exceed the spawning habitat capacity for the affected species.

It is important to recognize that "spawner deficit accounting" should not be confused with "harvest deficit accounting" in which a supplemental harvest would be permitted in the year following one in which the harvest share of the Tribe was not realized due to the impacts of ocean fishing. For now, the Tribe is persuaded that the condition of the Klamath fall chinook is so poor in terms of stock abundance, and that this condition probably describes other stocks as well, that conservation of the resources, not optimum economic yield ought to guide fishery management by the federal government in times of low stock abundance. This is particularly true in view of the fact that the Tribe's fishing right is a trust resource whose status was affirmed in the 102d Congress (Public Law 102-575 §3406(b)(23)). Moreover, the Secretary of the Interior is expected to establish in further detail the scope of the tribal fishing right in a Solicitor's opinion that he has announced will be published tomorrow, September 30.

In conclusion, spawner deficit accounting is a risk averse conservation measure that would establish in years of low stock abundance a priority for management decisions that contribute to rapid recovery of stocks to levels which provide a fishery capable of furnishing future economic benefit to all fishers. The Committee's interest in this matter is deeply appreciated.



*Hoop Valley Business Council*

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

Dale Risling  
Chairman

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Thursdays of each Month

TESTIMONY

of  
Pliny McCovey, Vice-Chairman,  
Hoopa Valley Tribe

Before the  
Senate Commerce, Science and Transportation Committee  
on the Reauthorization of the Magnuson Fishery Conservation and  
Management Act  
4 August 1993  
Washington, D.C.

Mr. Chairman and honorable members of the Committee, my name is Pliny McCovey, Vice-Chairman of the Hoopa Valley Tribe. I thank you for the opportunity to come before you today to present our perspectives regarding re-authorization of the Magnuson Fishery Conservation and Management Act. Our primary focus is on the structure of Regional Fisheries Management Councils, and the inclusion of statutory provisions designating tribal representation.

The Hupa people have inhabited the Klamath River region of northern California for over 10,000 years. Over this period, the Hupa people have depended upon the anadromous fishery resources of the region for sustenance, ceremony, and commerce. The Tribe maintains a reserved fishing and water rights to these resources which are held in trust by the United States of America.

TESTIMONY OF THE HOOPA VALLEY TRIBE

AUGUST 4, 1993

Establishment of the Magnuson Act has consolidated the management of numerous marine fish for the exclusive benefit of Americans. Included in this broad management authority are the anadromous fishery resources of the Klamath River Basin. The Hoopa Valley Tribe has participated in the annual management process of the Pacific Council by providing testimonies and salmon fisheries data. In addition, the Tribe holds a seat on the Klamath Fishery Management Council, an adjunct Federal body providing regional salmon harvest allocation recommendations and technical support to the Pacific Council.

Through our participation in the Pacific Council's management process, it has grown increasingly evident that statute amendments in the reauthorization provide for Federally appointed tribal representation. The State of Washington has nominated an at-large tribal manager to the Pacific Council over the past ten years. While this voluntary nomination has provided a conduit for tribal perspectives on the Pacific Council, the extensive geographic region served by the Council coupled with the emergence of treaty reserved fisheries throughout the region, require that tribal interests be thoroughly represented. Adequate advocacy for tribal treaty resources, given the complexity of anadromous fisheries management and the variance of circumstances among major watersheds, should provide for tribal representation covering logical habitat areas.

The Magnuson Act envisioned potential impacts from management decisions upon coastal States as well as the State of Idaho, because of the transitory nature of the salmon resource. In

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a similar manner, we believe that Tribes, retaining reserved fishing rights, should be afforded an equal measure of geographic representation. After ten years of practice, it is evident that the Pacific Council requires added tribal representation to fulfill its charge under Section 303(a) of the Act stipulating recognition of tribal harvest rights whether based on Treaty, Statute, or Executive Order. Sec 16 U.S.C. sec. 1853 (a).

The Pacific Council has already acted to reform its habitat committee to include broader tribal representation and to more effectively address the complexities of intra-regional habitat issues. For example, implementation of the Central Valley Improvement Act (PL 105-575) has far-reaching implications to West coast salmon management. The Hoopa Valley Tribe has invested heavily in the detailed pursuit of responsible habitat management to preserve the Tribe's historic cultural and commercial dependence on Pacific salmon of the Klamath Basin. Accordingly, the Tribe, as an integral party to the development of PL 105-575, is participating in its implementation and is in a unique position to participate in the Pacific Council's newly restructured habitat committee.

In conclusion, the Hoopa Valley Tribe specifically requests a provision for tribal representation from the northern California region on the Pacific Council. Further, the Tribe recommends that the State of Washington at-large position be formally established as representative of tribal governments. In keeping with the existing government-to-government relationship of Tribes in our intra-region with the United States, we further recommend that

TESTIMONY OF THE HOOPA VALLEY TRIBE

AUGUST 4, 1993

these positions be Federally appointed as governmental voting positions. (Initially, the Tribe recommends that the Secretary of Interior, in consultation with effected Tribes, be delegated authority to make appointments for each respective geographic region.) In practice, the Pacific Council manages for Klamath Basin salmon stocks within a geographic intra-region extending South from approximately Cape Falcon, Oregon. The complexity of intra-regional habitat management has already been addressed by the Pacific Council. We submit that fisheries management issues are equally complex and comprehensive representation by Tribes from intra-regional areas is reasonable and prudent. Thank you for the opportunity to present our recommendations on the reauthorization of the Magnuson Fisheries Conservation and Management Act.

MFCMA.364

*Hoop Valley Tribal Council*

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Thursdays of each Month**Dale Risling**

Chairman

September 10, 1993

Hand Delivered

Honorable Bruce Babbitt  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Honorable Ronald H. Brown  
Secretary  
U.S. Department of Commerce  
15th & Constitution Ave. N.W.  
Washington, D.C. 20230

Dear Secretary Babbitt and Secretary Brown:

During the week of September 13, the Pacific Fishery Management Council (PFMC) will be meeting in Portland, Oregon. Of principal concern to the Hoopa Valley Tribe in that meeting will be the Tribe's proposal that spawner deficit accounting be introduced to the PFMC's management program for Klamath fall chinook. The concept of deficit accounting is discussed in detail in our letter to you of March 19, 1993. Briefly, the application of deficit accounting to management of Klamath fall chinook would offset escapement below the floor of 35,000 natural spawners in any year by a corresponding spawner escapement in the succeeding year.

The purpose of this letter is to request that your representatives advise the PFMC of your support for further and immediate consideration of deficit accounting by the PFMC through public review and comment under PFMC procedures. For a number of reasons, this matter requires your attention.

First, for several years populations of Klamath fall chinook natural spawners have been severely depressed below the minimum safe level (35,000 adult chinook) necessary to avoid prolonged periods of low juvenile production.

Second, the predictive methodologies devised by government scientists for estimating ocean stock size by age are now known to produce overestimates at low stock levels.

Third, the use of emergency rule making to avoid breaching the escapement floor such as was employed for the 1993 season, while authoritative, is cumbersome and disruptive.

Fourth, the long-term viability of the Klamath chinook is essential to meaningful exercise of the reserved rights of the Klamath-Trinity basin Indian fishers. However, the current



Honorable Bruce Babbitt  
 Honorable Ronald H. Brown  
 September 10, 1993  
 Page 2

management regime has had disastrous impacts on fishery conservation, elevating the threat to long-term salmon production in the basin.

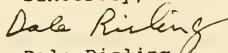
While the foregoing points have been well understood for a number of years, the PFMC has been unwilling to embrace the calls of its own scientists as well as the Tribe to modify fishery management to address the critical need for additional conservation measures in the management of Klamath fall chinook. However, the concerns of the PFMC scientists and our proposal for deficit accounting finally were given substantial consideration by senior officials in your Departments when they were used to defend the 1993 emergency rule to conserve the fishery and protect Indian fishing rights in Parravano v. Babbitt and Brown, No. C93-2003 TEH (N.D. Calif.). On August 12, 1993, the United States formally embraced the conclusions of its senior scientists when it submitted to the federal court affidavits of Kenneth A. Henry, Chairman of the PFMC's Salmon Technical Team, and Gary C. Matlock, Regional Operations Director for the National Marine Fisheries Service. As you know, those affidavits describe the PFMC's Klamath fall chinook management policy in recent years as "disastrous" and recognized the value of deficit accounting to compensate for depressed spawner escapement and the bias in the prediction models at low levels of stock abundance.

We propose that the PFMC conduct a review, with public participation, of the following deficit accounting concept. If adopted, the concept would be made an amendment to the Fishery Management Plan. The concept assumes an escapement floor of 35,000 natural spawners; spawning escapement below the floor in one year would result in a supplemental escapement the following year. We would propose not to cumulate deficits from year to year. In addition, we suggest consideration of a cap of 20,000 on the level of supplementation so that the maximum escapement in a deficit accounting year would be 55,000. That cap would limit spawner escapement in a deficit accounting year to approximately two-thirds of the spawners necessary to achieve maximum sustainable yield given the high estimate of basin capacity (106,000 natural adults) presented in the Klamath River Technical Team's February 1986 Recommended Spawning Escapement Policy for Klamath River Fall-Run Chinook, at pages 7, 12 (Figure 5). We believe that this limit would preclude deficit accounting from resulting in over escapement to the basin. Moreover, the cap compares favorably with the 70,000 spawner escapement ceiling proposed by the non-Indian trolling industry in 1990. Thus for example, if deficit accounting had been in place in 1992, the spawning escapement floor in 1993 would have been 55,000 because there were 11,200 spawners in 1992, 23,800 below the 35,000 floor but subject to the 20,000 cap on deficit supplements.

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Our concept of deficit accounting is efficient and fair to the economic interests of the fishers and the conservation needs of the fishery. Your support for a deficit accounting amendment could prove essential to the long term health of the Klamath fall chinook fishery and avoid the kind of devastating conflict that this Administration confronted in the ancient forest controversy. Your attention to this matter is deeply appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Dale Risling".

Dale Risling  
Chairman

## *Hoop Valley Business Council*

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**Dale Risling**  
Chairman

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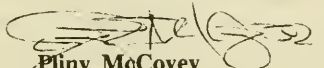
29 October 1993

Honorable Thomas J. Manton  
Chairman, Subcommittee on Fisheries Management  
U.S. House of Representatives Committee on  
Merchant Marine and Fisheries  
Room 1334, Longworth House Office Building  
Washington, DC 20515-6230

Dear Chairman Manton:

Enclosed you will find my responses to Committee questions regarding my testimony on the reauthorization of the Magnuson Fishery Conservation and Management Act (H.R. 780 legislation). The Hoopa Valley Tribe greatly appreciated the opportunity to address the Committee on this important issue. If you require further information or clarification of the responses provided, please do not hesitate to contact my office.

Respectfully yours,

  
**Pliny McCovey**  
Vice-Chairman

Enclosure

Conservation efforts

- Q. Do the Management Councils adequately consider long term economic and environmental benefits in setting harvest caps and allocations?**
- A.** Generally, the Pacific Council appears to have acted in the interest of short term economic needs in its setting of harvest caps and allocations. While the FMPs outline long range requirements for resource protection, the annual setting of Total Allowable Catch (TAC) standards are often biased in consideration of short termed economic gains. We fear that the sum total of this approach could lead to a steady decline in the stock strength of all species managed by the Councils. Long term economic and environmental benefits are difficult to anticipate or defend in the context of the annual allocation process. The Councils receive testimonies in the public debate process whose intensity tend to increase in proportion to the need for long term conservation of stocks. For example, depressed west coast salmon stocks suggest that protection of long term economic and environmental benefits should take precedent over sustenance of overcapitalized fisheries which have grown dependent on these stocks. However, the Pacific Council has acted repeatedly to allow access to these stocks even in years when minimum escapement levels could not be met in the absence of fishing.
- Q. Many suggest we need to replace the ad hoc species specific management approach with one that looks at the entire ecosystem. What are your views on this? Should some organ other than the Councils be responsible for long term planning?**
- A.** Generally supportive of identifying some means of closing the loop between the present Council process, which often only manages at one stage in the lifecycle of species such as salmon. The ecosystem upon which the salmon depend includes in-river fish habitat. Long term planning needs for proper protection and conservation of fish stocks are not addressed through the present Pacific Council process. Meeting schedules are such that only immediate, short term issues are addressed. For example, management of ocean salmon fisheries dominate the Council agenda in March-April, while management of ocean marine fish stocks maybe the issue during subsequent meetings in July, August, and September.
- Q. How should the Magnuson Act be revised to reduce waste and by-catch problems?**
- A.** The Act should call for regional councils to develop FMPs which identify fisheries with a potential for by-catch and develop measures to minimize these impacts within specific time frames. In the past, the by-catch issues has gained much attention in groundfish and pelagic trawl fisheries. However, the Pacific salmon fishery is increasingly being restricted in response to the protection being extended certain salmon stocks under ESA. Quantification of by-catch of listed salmon stocks occurring within mixed stock ocean fisheries will likely gain greater attention in the near future. Thus, regional councils need to envision inter- and intra-specific ramifications of by-catch; the problem occurs across numerous fisheries and gear types.
- Q. Are the Management Councils doing a good job of minimizing waste and by-catch, of are they choosing not to exercise such authority?**
- A.** While we are primarily familiar with the Pacific Council's activities. We reiterate that a "good job" definition includes a course of action coupled with a time frame for accomplishments. Actions could include gear-type restrictions, area closures, and increased selectivity of gear such as escapement devices. Emergent by-catch problems shall

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potentially demand increased research and development of other innovative techniques to allow affected fisheries to proceed. Thus, a commitment to addressing the by-catch issue must be included in the Act's reauthorization to preserve the diversity of national fishery resources and their dependent economies and cultures.

Q. Do we need to define "overfishing" in the Magnuson Fishery Conservation and Management Act? And, if so, how should we define "overfishing"?

A. Comprehensive remedies for stocks whose abundance has fallen to critical levels will require that the concept of "overfishing" be clearly defined. Currently, the Klamath River fall chinook (Pacific Council jurisdiction) is being reviewed under the "overfishing" definition provided by 602 guidelines. Those guidelines require each FMP to define "overfishing" on a stock specific basis in terms of minimum levels of stock spawning biomass or other measurable standard. Recovery plans with timetables are required for any stock determined to be "overfished".

In the review process for the Klamath chinook much discussion has focussed on the definition of "overfishing" and no consensus has been reached whether the stock has indeed been "overfished". That is, the question remains of whether fishing has acted unilaterally to reduce the abundance of Klamath fall chinook spawner abundance below minimum management guidelines. The degree to which habitat loss in the river system may have contributed to the Klamath stock's decline can not be accurately stated. In short, any definition of "overfishing" must acknowledge that multiple causes could lead to a stock's decline.

The question next becomes one of authority and jurisdiction to address those causes (e.g. riverine habitat degradation). In the given example, anadromous species typically cross multiple jurisdictions within their life cycle. The survival of these fish is dependent on habitat integrity throughout their range of migration, much of which falls outside of the authority of regional management councils.

Q. NMFS reports that 42 percent of 153 species groups are overfished. Does this indicate a "conservation" problem and, if so, how do we address this problem?

A. While numerous factors could potentially lead to "overfished" status (e.g. see response to previous question), the fact that nearly half of the assessable stocks are overfished indicates a critical conservation problem. One common understanding in fisheries management is that the "management" of a fishery evolves after the fact. That is, newly emergent fisheries targeting specific stocks often flourish before fundamental knowledge about the stock's life history and productivity parameters are understood. By the time management has gathered enough data to assess the status of an exploited fish population, the fishery is typically overcapitalized. Thus, the management process becomes politically constrained in its ability to reduce fishing effort for stock protection.

At the root of this problem is the notion of "open-access" for citizens to harvest a public resource. If the full economic potential of US fisheries is to be realized, levels of harvest effort shall need to be strictly regulated and in agreement with stock productivity. Increasingly, managers are



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restricting access to troubled fisheries. This approach should be considered for healthy fisheries of today, lest they become subject to intensified pressure resulting from the displaced effort of limited entry fisheries. Coupled with this problem of effort shift, today's healthy stocks may be subjected to overall decline in ocean productivity related to the status of depleted stocks (ecosystem stress). Accordingly, traditional stock-by-stock management techniques may need to be increasingly replaced with stock complex or ecosystem management strategies.

- Q. Some suggest that the Councils do not act until a fishery has already been overfished. How serious a problem do we have with recognizing a need for a FMP before a crisis develops?
- A. This question was partially addressed in the previous response. Certainly, the reactive nature of past fisheries management must become more proactive to address the growing complexity of and relatedness between exploited species and stocks. Again, the problem of collapsing fisheries either due to economic or management constraints may contribute to a "domino" effect; displaced vessels entering emergent fisheries at a geometrically expanding rate. Thus, it appears vital that for healthy stocks to remain viable, we need to manage all stocks in an integrated manner. Development of FMPs for all potentially exploitable stocks would be a worthwhile consideration.
- Q. Do Councils generally have adequate data to ensure that Fishery Management Plans have a scientifically sound basis? Do Councils take full advantage of this information?
- A. The element of uncertainty in the science of fisheries management will never be eliminated. Predictive methods are adaptive and, through time, Councils do attempt to eliminate obvious bias in stock abundance forecasts. However, fish population dynamics and levels of acceptable harvest are fisheries management concepts which are only validated through the rigors of application. In the case of salmon management, we may never have enough data to accurately state appropriate levels of exploitation. This relates to the dynamic nature of population genetics, habitat quality, and environmental variability. Accordingly, it seems that the best approach would be to exercise caution and if we error that we error on the side of the resource.

For example, in the case of the Klamath fall chinook, a minimum escapement floor of 35,000 natural adults must be cleared each year as specified in the FMP. In recent years of low abundance, the Pacific Council has assumed a level of risk in its allocation of harvest which violated the floor escapement level. Thus, regardless of the "scientific soundness" of the floor escapement level in the FMP, Councils exercise their discretion to provide near term economic benefits. This practice has resulted in the current "overfishing" review for the Klamath fall chinook. As a response to three years of sub-floor escapement, the Hoopa Valley Tribe proposed a proactive response of spawner deficit accounting to pay back the resource for spawner short falls. This is an example of a risk-averse philosophy which acknowledges that our scientific basis for decisions is less than perfect. In short, if we have a choice to error in our management, we should do so on the side of the resource. This appears to be the best compensation for our less than perfect scientific knowledge.

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- Q. How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?
- A. Presently, some commercial operators are required to carry observers which monitor at sea harvest. However this requirement is placed on discrete fisheries and vessel sizes. A similar call for fishers participation in data collection should be made for many other fisheries. Logbook maintenance should be a standard requirement of all commercial fishery operators including recreational charter vessels. Data on location, species and date of capture are invaluable for fisheries scientists to forecast abundance and refine management procedures. Random assignment of trained observers to vessels completing logbooks should also be initiated to validate logbook accuracy. Logbook data could be especially useful in the census of marine mammal and bird populations as well as monitoring by-catch of non-target marine organisms.

The cost of management and data gathering has grown exponentially in recent years. The immediate beneficiaries of these data--the dependent industries--should carry a greater share of these costs. One way to achieve this would be a direct assessment on the biomass of ocean products handled throughout the harvest and marketing process. The industry would ultimately benefit from increased accuracy in the data collected since management decisions could more comprehensively address the long term viability of fish stocks. In summary, recreational and commercial harvesters could chose to provide accurate logbook data or pay for the collection of these data by third parties through direct taxation on landings.

Habitat Protection

- Q. Do Councils need more authority to protect habitat on behalf of fishery resources? How might this be accomplished?
- A. The Hoopa Valley Tribe suggests that the Management Councils increase their participation in inter-agency planning. For example, the Pacific Council should participate in annual operations planning for Central Valley Project water management.
- Q. How should we amend the Act to strengthen Habitat Protection?
- A. The Act should establish standing habitat protection committees with in the Regional Management Council structure with responsibilities to make recommendations on major State and federal actions with significant potential to affect fish habitat.
- Q. What additional authority do Federal and State fishery management agencies need to adequately protect critical fish habitat?
- A. The Clinton administration has proposed the creation of a National Biological Survey. The NBS would catalogue wildlife species and formulate plans to protect their habitat based on ecosystems, species biology and population dynamics. Legislation to establish an NBS is pending (H.R. 1845). While we understand that the NBS legislation has adherents and opponents, the principle behind the NBS is sound. Habitat is affected by myriad programs of state and federal agencies; if the NBS would enable managers to make program decisions affecting habitat in a strategic, comprehensive manner, a more

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fully informed decision on habitat protection is likely to be made than would be under current planning procedures. Given the numerous authorities Congress has already enacted that affect salmon habitat in the Klamath-Trinity Basin, it may not be more authority that is needed, but better coordination of existing authorities by program managers. The Committee could allocate more of its time to oversight of the executive's implementation of existing law instead of creating additional authorities.

- Q. Should the Councils and NMFS take a stronger, pro-active role in habitat protection, including on-shore issues that might affect marine fisheries?
- A. Generally yes, this question is answered in part throughout our other responses.
- Q. Does the Magnuson Act need to be amended to require Councils and NMFS to take a stronger role in habitat protection, and, if so, what are your specific recommendations to accomplish this?
- A. Establish clear requirements and process for Council comment on State/federal activities with potential to substantially affect fish habitat. Specifically for the Pacific Council, it should establish regular joint meetings with the Klamath Basin Fishery Restoration Task Force and the Trinity River Basin Fish and Wildlife Restoration Task Force.

Funding

- Q. Do you have any specific suggestions on implementing funding mechanisms that would be alternatives to federal fishing licenses?
- A. Establish a federal fish stamp program analogous to that for duck stamps. Stamps would be required of all fishers of anadromous fish. Proceeds would be used for habitat restoration and protection.
- Q. Is it reasonable to say that those who profit from the reduction in overcapacity (i.e. those remaining in the industry) should pay the cost of compensating those driven from a fishery?
- A. No. There are too many variables that affect a decision to remain in or leave the industry to quantify or allocate that cost reasonably. Moreover, fishers who leave as well as those who stay have contributed to the depletion of the fishery and participated in the economy which adversely affected fishery habitat. In the case of an Indian tribe with a federal reserved vested property right in a fishery and a cultural and economic interest in its continued exercise, it would be unconscionable to expect the tribe to abandon the fishery or share the cost to those who do leave. More specifically, the Hoopa Valley Tribe has been a singular voice calling for fishery conservation and habitat protection. Had its call been heeded before now, a significant portion of habitat degradation could have been avoided or mitigated. While the Tribe has a right to remain in the fishery and profit from it, it expects that many years will pass before the degradation caused by the departed fishers will be repaired. The Tribe has no intention of compensating those who may depart in the meantime.

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- Q. Please assess the willingness of fishery resource users in the New York-New Jersey area to bear a larger share of the costs of Federal fishery management efforts. What alternatives are perceived as the least burdensome by resource users?
- A. The Hoopa Valley Tribe has no knowledge of the fishery in the New York-New Jersey area and respectfully declines comment on this question.
- Q. If additional revenues for marine fisheries conservation and management are necessary and Congress decides that users and others should bear some of the cost, how should those costs be allocated among interested parties?
- A. One of the most destructive aspects of modern, targeted fisheries is the substantial destruction of non-targeted species otherwise known as the bycatch. Perhaps a fee system could be established in which the amount of the fee is determined by the relationship of the catch (either in terms of numbers of fish or weight of biomass) to the bycatch. The objective would be to reduce or eliminate the fee as the fisher demonstrated a corresponding reduction in bycatch. It is understood that success with this approach would produce less, not more, revenues. But by the same token, there would be less need for the revenues if the bycatch problem were ameliorated. With regard to habitat protection a fee schedule could be based on a unit charge for water diverted away from a fishery either in a way that affects the amount, quality (including temperature) or timing of its availability for habitat maintenance. In addition, fees could be established on a scale that diminishes in proportion to the width of stream side protection zones above an established minimum. A fee could also be established for export of raw logs.

Council Membership

- Q. Should the selection process for new members of fishery Management Councils be modified to ensure a more fair and balanced Council membership? How do you define "fair and balanced" representation?
- A. Through our participation in the Pacific Council's management process, it has grown increasingly clear that federally appointed tribal representation is needed. The State of Washington has nominated an at-large tribal manager to the Pacific Council over the past ten years. While this has provided a conduit for tribal perspectives on the Pacific Council, the extensive geographic region served by the Council coupled with the emergence of treaty reserved fisheries throughout the region, require that tribal interests be thoroughly represented.

The Magnuson Act envisioned potential impacts from management decisions upon coastal states as well as Idaho, because of the transitory nature of the salmon resource. In a similar manner, we believe that tribes, retaining reserved fishing rights, should be afforded an equal measure of geographic representation. After ten years of practice, it is evident that the Pacific Council requires added tribal representation to fulfill its charge under Section 303(a) of the Act calling for recognition of tribal harvest rights whether based on treaty, statute, or Executive Order. See 16 U.S.C. sec. 1853(a).

The Pacific Council has already acted to reform its habitat



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committee to include broader tribal representation and to more effectively address the complexities of intra-regional habitat issues. For example, implementation of the Central Valley Improvement Act (PL 105-575) has far-reaching implications to west coast salmon management. The Hoopa Valley Tribe has invested heavily in the detailed pursuit of responsible habitat management to preserve the Tribe's long-standing cultural dependence on Pacific salmon of the Klamath Basin. Accordingly, the Tribe, as an integral party to the development of PL 105-575, is participating in its implementation and is in a unique position to participate in the Pacific Council's new habitat committee.

In conclusion, the Hoopa Valley Tribe specifically seeks tribal representation from the northern California region on the Pacific Council. In keeping with the existing government-to-government relationship of tribes in our intra-region, we further recommend that the seat be federally appointed as a governmental voting position. In practice, the Pacific Council manages for Klamath Basin salmon stocks within a geographic intra-region extending south from approximately Cape Falcon, Oregon. The complexity of intra-regional habitat management has already been addressed by the Pacific Council. We submit that fisheries management issues are equally complex and comprehensive representation by tribes from intra-regional areas is reasonable and prudent.

- Q. It has been suggested that the Council Member from the regional NMFS office should be a non-voting member of a Council and that the regional Fish and Wildlife Service representative should be given a vote. What are the merits, if any, of this proposal?
- A. Both NMFS and the FWS have substantial contributions to make in Council deliberations. Their respective agency missions and public constituencies have occasionally placed them in conflict with the Councils. That should not mean that one deserves a formal voice in the Council at the expense of the other. This is true even though the Council ultimately reports to the Secretary of Commerce which supervises NMFS so that the NMFS constituency may be considered "represented" at the Secretarial level.

Our view is that the Councils need to be clearly supervised and instructed to receive and consider fairly the input of both agencies. In sum, both FWS and NMFS should have the same status in the Councils. It is important that NMFS retain its ability to vote on critical fishery resource issues since this agency is responsible for ensuring that ESA requirements are met. It would also be appropriate for USFWS, as representative of the Department of the Interior, be permitted to vote on regional Management Councils. In particular, as the representative of DOI, USFWS reflects the critical issues of resource conservation which are fundamental to the fulfillment of the federal trust responsibility to Indian tribes. Although all federal agencies share the trust responsibility to tribes, DOI agencies are most familiar with Indian trust resource issues. Moreover, the USFWS expertise and knowledge of inland habitat issues makes them best suited for balancing conservation requirements with industry needs in harvest management decisions affecting anadromous fisheries.

- Q. The National Marine Fisheries Service has suggested that each State Governor should be required to nominate six rather than "at least three" nominees. Would this improve the functioning



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of the Councils? Would this change give the Federal Government too great a degree of control over the selection process?

- A. The Hoopa Valley Tribe does not recognize the motivation for expanding the pool of nominees. Improvement of Council operations seems more a function of the appointees who are selected to serve on the respective Councils. From the Tribes perspective, increased Indian representation would be a proactive step in assuring that the Councils objectively balance habitat and resource utilization issues to provide long term viability of National fisheries.

Changes in Industry

- Q. What sort of policy changes should Congress consider to ensure that the Magnuson Act will more effectively mandate fishery management and conservation in the National interest? Can these changes be made and still protect the interest of sportsmen, commercial fishermen, and consumers?
- A. Tribal interest over effective management and conservation is substantial and should not be overlooked. As pointed out in the question on representation, Congress needs to provide for Indian representation on Management Councils. In general the "National Interest" is the sum total of those involved in the fishery (sportsmen, commercial, consumers, and Indian Tribes). Any conservation measures are integral to these groups' best interest and perpetuation of the resource for future generations of same shall only be achieved through effective management.
- Q. It has been suggested that if an FMP (fisheries management plan) leads to the displacement of historic participants, then the federal government should provide some adjustment assistance for those displaced persons. How do we define "historic participants" and what kind of assistance might be appropriate?
- A. At the outset it should be observed that the Hoopa Valley Tribe is not merely an historic participant in the fishery; its fishery practices date from prehistory. The Tribe will oppose any FMP that leads to its displacement from the fishery. As to any other participants, there are limits to what the government can be expected to do to ameliorate the results of destructive fishery practices. Perhaps they could be included in the Administration's proposal for dealing with displaced workers in the forest industry. The definition of historic participants is problematic. The fishery has been degraded not only by those in the fishing industry but also by those who diverted water away from fish habitat for irrigation and power uses and destroyed habitat through improvident timber practices. As mentioned, the timber industry workers are being accommodated by the Administration's plan. The irrigation and power users may work with federal agencies to achieve conservation savings, though it is unlikely that new, additional subsidies realistically can be expected to be authorized for those users.

Conflict of Interest

- Q. We have heard a good number of complaints about conflicts-of-interest among Council members. How do you define "conflict-of-interest"? Please comment on the seriousness of this problem?

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- A. Of course, the knowledge that the Hoopa Valley Tribe has is confined to the Pacific Council process, therefore our perspective regarding this issue is applicable to the PFMC only. Conflict of interest, in the context of fishery management occurs when a persons livelihood is affected by a resource management decision of a Regional Council in which that person participates. We regard this problem to be serious and prevalent within our experience with the Pacific council. Most of the "at large" positions are representatives appointed by the State Governors. Further the sub-section B-2(b) states that the individuals be "active" participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Councils. Moreover, the criteria for selection of participants is also defined in B-2(a), as requiring individuals who, by reason of occupation or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. It seems that conflicts of interest arise when the Secretary appoints members who are associated with commercial and recreational fisheries. If, for example, someone with expertise in conservation and management of the affected fishery resources (but not an immediate stake holder in the resource) were appointed, a more balanced approach would be attained. Finally, the State Governors nominate candidates for consideration by the Commerce Secretary. In order to insulate existing Council members from control of State Governors or employers, each incumbent Council member's name should be considered for reappointment by the Secretary, regardless if the State resubmits their name in subsequent appointment cycles. This would enhance an individual Council member's ability to be carry out their responsibility free from State's influence.

Council Operations

- Q. Some argue that nothing is inherently wrong with the MFCMA, and that the problem is more one of implementation. Do you agree or disagree, and why? If you agree, what should Congress do to improve implementation -- additional oversight, adding provisions for citizen suit procedures to the MFCMA or something else?
- A. The 9th Circuit has ruled that the Secretary of Commerce has the authority to implement a system of deficit accounting to compensate in a subsequent year for shortages in spawner escapement or harvest allocation caused by errors in prediction or actions by fishers. Northwest Environmental Defense Center v. Gordon, 849 F.2d 1241 (9th Cir. 1988). The Hoopa Valley Tribe has advocated consistently, but without success for the adoption of deficit accounting to ensure adequate levels of spawner escapement. Congress could consider examining that concept through its oversight function and if the executive branch is not willing to implement the concept administratively, Congress should require its use at least for fishery conservation if not as an enforcement mechanism for harvest allocation as well.
- Q. How do you perceive the balance of power between Fishery Management Councils and the Secretary of Commerce/NMFS? Should the Secretary of Commerce exercise greater or less authority over the Council process?
- A. The Secretary has exercised his authority to reject a

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Council's recommendation with sensitivity. The balance is appropriate.

Q. If funding for Councils is further reduced, where would cutbacks be directed? What changes in the Magnuson Act might be needed to give Councils more fiscal flexibility to manage under reduced funding?

A. As more and more fisheries become over-exploited, fishing effort increases, and budgets for management of affected fisheries are reduced, the effective management of National fish stocks will become more difficult. If, however, these cutbacks to Council activities were mandatory, a possible area for reduction would be the management of under-utilized fish stocks while preserving management of fisheries of concern. Another possible alternative for supplementing decreased funding would be initiation of user fees and resource royalties. The Magnuson Act could be amended to allow the Secretary of Commerce to collect user fees to help defray the cost of managing the fishery including establishment of user fees for observer programs.

Q. Do Councils generally have adequate data to ensure that Fishery Management Plans have a scientifically sound basis? Do Councils take full advantage of this information?

A. The element of uncertainty in the science of fisheries management will never be eliminated. Predictive methods are adaptive and, through time, Councils do attempt to eliminate obvious bias in stock abundance forecasts. However, fish population dynamics and levels of acceptable harvest are fisheries management concepts which are only validated through the rigors of application. In the case of salmon management, we may never have enough data to accurately state appropriate levels of exploitation. This relates to the dynamic nature of population genetics, habitat quality, and environmental variability. Accordingly, it seems that the best approach would be to exercise caution and if we error that we error on the side of the resource.

For example, in the case of the Klamath fall chinook, a minimum escapement floor of 35,000 natural adults must be cleared each year as specified in the FMP. In recent years of low abundance, the Pacific Council has assumed a level of risk in its allocation of harvest which violated the floor escapement level. Thus, regardless of the "scientific soundness" of the floor escapement level in the FMP, Councils exercise their discretion to provide near term economic benefits. This practice has resulted in the current "overfishing" review for the Klamath fall chinook. As a response to three years of sub-floor escapement, the Hoopa Valley Tribe proposed a proactive response of spawner deficit accounting to pay back the resource for spawner short falls. This is an example of a risk-averse philosophy which acknowledges that our scientific basis for decisions is less than perfect. In short, if we have a choice to error in our management, we should do so on the side of the resource. This appears to be the best compensation for our less than perfect scientific knowledge.

Q. The 1990 MFCMA amendments removed highly migratory species management from Council jurisdiction and gave the Secretary authority to manage these species. How do you believe these species should be managed under the MFCMA?



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- A. We agree with the general intent of the 1990 amendments, that migratory species, crossing the jurisdictions of multiple Management Councils, should be regulated at the Secretarial level. The 1990 amendments provided for Secretarial authority to regulate highly migratory species up to but not in exceedence of international criteria (§ 304(f)(3)(E)). Accordingly, the Secretary does not have the authority to require management actions which may be more restrictive than those developed through international agreements, even if such actions may be advisable for risk-averse management. To be consistent with a risk-averse policy, the Secretary should be provided an additional measure of authority to exceed the management standards developed through international agreements if those standards are insufficient for resource conservation.
- Q. Some talk about a lack of Secretarial oversight of the fisheries management process, is this changing under Secretary Brown?
- A. Yes. The Secretary intervened twice in the last year to revise Pacific Council recommendations by emergency order. That reflects a commitment to Secretarial oversight.
- Q. Please address the appropriateness of gathering data through logbook entries.
- A. As noted earlier, logbook data may be appropriate provided that the quality of those data is verifiable through direct observation. Concern over the accuracy of data is perhaps the primary objection which may be voiced. To counter this concern will require educating the commercial and recreational fishers, and their support industries, of the importance for accurate data. If a risk-averse management philosophy is formally adopted in the MFCMA reauthorization, then it will be clear that lack of accurate data, will translate to a degree of conservatism in management which could severely restrict access to harvest. It must be noted that the Hoopa Valley Tribe has been monitoring and responsibly managing its salmon fishery for many years and provides data to the PFMC annually.
- Q. Could the process for developing an FMP be streamlined while still assuring a quality plan?
- A. The Hoopa Valley Tribe is most familiar with the development of the Pacific salmon management plan for fisheries off the coasts of Washington, Oregon, and California. Two points may be made regarding the development and implementation of this plan. The first is that the requirement for a comprehensive "quality" plan from which to build sound management principles is paramount. And the second point is that a "streamlined" plan is no different from a comprehensive plan if Councils choose to sidestep FMPs in the interest of short term economic relief for ailing industries.

The FMPs are intended to be responsive to new scientific evidence which may suggest new approaches to management. The vehicle used in this regard is the amendment process. With the general decline of Pacific salmon stocks throughout the west coast, we have proposed a new management paradigm based on risk-averse management. Our proposal is to initiate a policy of spawner deficit accounting for the Klamath River fall chinook to make annual adjustments to spawner requirements based on shortfalls of spawners in the preceding year. The degree of implementation of this new paradigm shall

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be our indication of the advisability of "streamlining" the FMP process.

- Q. How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?
- A. Presently, some commercial operators are required to carry observers which monitor at sea harvest. However this requirement is placed on discrete fisheries and vessel sizes. A similar call for fishers participation in data collection should be made for many other fisheries. Logbook maintenance should be a standard requirement of all commercial fishery operators including recreational charter vessels. Data on location, species, and date of capture are invaluable for fisheries scientists to forecast abundance and refine management procedures. Random assignment of trained observers to vessels completing logbooks should also be initiated to validate logbook accuracy. Logbook data could be especially useful in the census of marine mammal and bird populations as well as monitoring by-catch of non-target marine organisms.

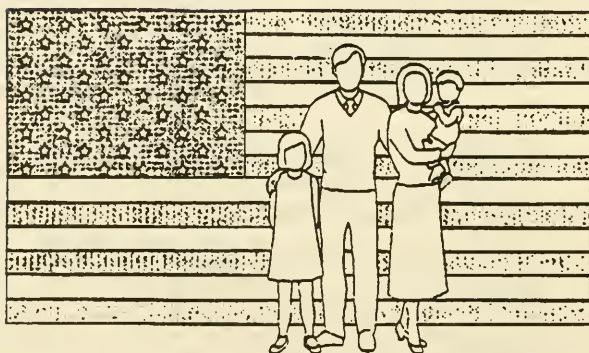
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TESTIMONY FOR MAGNUSON ACT  
MERCHANT MARINE AND FISHERIES  
COMMITTEE

WEDNESDAY SEPTEMBER 29, 1993

# Do You Care?



LINDA JOHNSON  
POST OFFICE BOX 640513  
KENNER, LOUISIANA 70064

39 MOSELLE DRIVE  
KENNER, LOUISIANA 70065

FIRST, IT MUST BE SAID THAT IN 1976 WE WERE VERY STRONG SUPPORTERS OF THE MAGNUSON ACT. HOWEVER, THROUGH THE EVOLUTION OF THE YEARS THE ORIGINAL INTENT; TO PROTECT AMERICAN FISHERMEN FROM FOREIGN FLEETS FISHING IN AMERICAN WATERS, HAS BEEN LOST. AT PRESENT, IT IS NO LONGER FOR THE PROTECTION OF COMMERCIAL FISHERMEN IN THE GULF OF MEXICO, BUT RATHER A TOOL TO SEVERELY IMPEDE THE INDUSTRY FROM SURVIVING. THE MAGNUSON ACT IN THE GULF OF MEXICO REGION IS ALMOST ALWAYS VIOLATED WITH EVERY REGULATION; THEY DO **NOT** DO MEANINGFUL SOCIAL OR ECONOMIC IMPACT REVIEWS; THEY DO NOT CONSIDER IT IMPORTANT AND THEY DO NOT TAKE IT INTO ANY CONSIDERATION WHEN PASSING REGULATIONS. ALL REGULATIONS HAVE THE SAME WORDING; **THERE WILL BE NO SOCIAL OR ECONOMIC IMPACT WITH THIS REGULATION;** WHEN IN FACT ON MANY REGULATIONS IT HAS BEEN THE DESEIMATION OF A SMALL BUSINESS.

I HAVE ATTENDED THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL MEETINGS FOR FIVE YEARS AND I AM STILL TRYING TO SEE SOME FORM OF EQUITY, FAIRNESS, OR REASON. THESE BASIC RIGHTS DO NOT EXIST IN OUR REGION BECAUSE OF THE MAKE UP OF THE COUNCIL. THE GUISE OF ACADEMIA TO PROTECT RECREATIONAL INTERESTS IS RAMPANT ON THIS BODY. WE HAVE NEVER HAD A BALANCE BETWEEN COMMERCIAL AND RECREATIONAL INTERESTS AND THE RUSE OF PROTECTION OF THE RESOURCE IS LUDICROUS WHEN EVERY NEWSPAPER ON THE GULF COAST IS SHOWING ASTRONOMICALLY HIGH CATCHES AND SIZES OF RED SNAPPER BY RECREATIONAL ANGLERS. IS THE COUNCIL OR NATIONAL MARINE FISHERY SERVICE WORRIED ABOUT CLOSING THE RECREATIONAL SECTOR; THE ANSWER IS **NO**.

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THE DIRECTED COMMERCIAL SECTOR FOR RED SNAPPER HAS TAKEN A SEVERE TURN. 1990 WAS THE FIRST YEAR THAT A QUOTA WAS IMPOSED ON THE RED SNAPPER AND FISHERMEN AND DEALERS IN THE REGION WERE AFRAID CONSEQUENTLY THE NUMBERS FOR 1990 SHOW THAT THE COMMERCIAL HARVEST WAS ONLY 2.5 MILLION POUNDS. THIS IS A TIME BEFORE NATIONAL MARINE FISHERY SERVICE CALLED DEALERS EVERY OTHER DAY TO GET HARVEST LEVELS. 1990 WAS ALSO THE FIRST YEAR THAT A REEF FISH PERMIT WAS REQUIRED AND IN ORDER TO OBTAIN ONE YOU HAD TO PROVE, THROUGH INCOME TAX RETURNS, THAT 51 PER CENT OR MORE OF YOUR INCOME CAME FROM COMMERCIAL FISHERIES. IT WAS ALSO THE FIRST YEAR THAT THE LOGBOOKS WERE REQUIRED BUT ONLY 20 PERCENT PARTICIPATION WAS THROUGHT NECESSARY.

I REPRESENT THE HISTORICAL DEPENDENT OF RESOURCE; CONSEQUENTLY EARNED INCOME COULD BE 100 PERCENT AND THEY WOULD QUALIFY.

IN 1991 THE RED SNAPPER QUOTA WAS REDUCED TO 2.04 MILLION POUNDS FOR THE COMMERCIAL SECTOR AND THE RECREATIONAL ANGLER HE STAYED AT A SEVEN FISH BAG LIMIT BECAUSE OF A LOOPHOLE THAT WAS FOUND IN THE ALLOCATION SCHEME. IT IS IMPORTANT TO UNDERSTAND THAT THIS WAS NOT DONE UNTIL MARCH OF 1991. AT THAT TIME THE AGENCY ASKED INDUSTRY FOR COOPERATION IN GETTING ACCURATE NUMBERS; I MUST: STRESS NOT TO CORRECT ERRORS OF THE PAST BUT FROM THE END OF MARCH, 1991 FORWARD. WE WERE TOLD THAT IF INDUSTRY MET THE QUOTA IN A REASONABLY SHORT TIME THAT THE QUOTA COULD THEN BE ADJUSTED. WE COOPERATED AND WERE CLOSED AUGUST 23, 1991; RECREATIOANL SECTOR STILL FISHED FOR 12 MONTHS.

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IN 1992 THE COMMERCIAL SECTOR WAS REDUCED TO 53 DAYS. THE ALLOCATION WAS **NEVER READDRESSED**. NATIONAL MARINE FISHERIES SERVICE WAS UNABLE TO ISSUE 1992 PERMITS PRIOR TO JANUARY 1, 1992 CONSEQUENTLY NO PERMIT WAS REQUIRED TO LAND OR SELL FISH. THERE WERE APPROXIMATELY 2,000 BOATS THAT TOOK PART IN THIS DERBY, 40 PER CENT OF THE RED SNAPPER LANDED WAS BY NON PERMITTED BOATS. THE GULF COUNCIL THEN PASSED AN EMERGENCY ACTION TO ALLOW PERMITTED BOATS A 1,000 POUND TRIP LIMIT TO COVER LENT. THIS WOULD NOT HAVE BEEN PASSED THROUGH IN A TIMELY MANNER IF IT WERE NOT FOR THE HELP OF SOME OF OUR CONGRESSMEN, SENATORS, COUNCIL ON ECONOMIC COMPETITIVENESS, AND MRS. BARBARA FRANKLIN THEN SECRETARY OF COMMERCE. THIS EMERGENCY ACTION LASTED FOR 41 DAYS. TOTAL COMMERCIAL HARVEST OF RED SNAPPER INCLUDING THE EMERGENCY ACTION WAS 3.0 MILLION POUNDS.

BECAUSE OF THE DERBY IN 1992 IT WAS FELT THAT A LIMITED ACCESS SYSTEM BE PUT INTO EFFECT FOR 1993, 131 BOATS MET THE ELIGIBILITY TO OBTAIN A RED SNAPPER ENDORSEMENT. THE SEASON DID NOT OPEN UNTIL FEBRUARY 16TH WITH A 2,000 POUND TRIP LIMIT IMPOSED. THE SEASON LASTED 93 DAYS (33 LOST TO WEATHER). THE RECREATIONAL ANGLER WAS ALLOWED HIS SEVEN FISH BAG LIMIT IN ALL OF THESE YEARS AND FISHED FOR 12 MONTHS. THE RECREATIONAL SECTOR IS MONITORED LIKE COMMERCIAL USED TO BE, IT IS NOT; CONSEQUENTLY THE NUMBERS ARE **WRONG**. I DO NOT BELIEVE THAT **ANY USER GROUP**, IS DOING ANY DAMAGE TO THE RESOURCE. YOU CANNOT CATCH WHAT IS NOT THERE, LOGIC MUST PREVAIL.

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I AM ALL FOR CONSERVATION OF RESOURCE, WE JUST CANNOT HAVE PRESERVATION OF ANY RESOURCE SUCH AS THE RED DRUM AND THE RED SNAPPER BECAUSE THE ECOLOGICAL BALANCE IN THE GULF OF MEXICO IS THROWN OFF. FISH NEED FOOD, THEY WILL EAT SHRIMP, CRABS, JUVENILE FISH, ETC.

WHAT IS THE PURPOSE OF PRESERVING ONE SPECIES AT THE EXPENSE OF ANOTHER SPECIES; TO SATISFY THE ELITE OF THIS COUNTRY AND THE AVERAGE AMERICAN CITIZEN BE DENIED A SAFE AMERICAN PRODUCT FROM AMERICAN WATERS AND FORCED TO BUY AN IMPORT INSTEAD. I WOULD ASK WHY?

FOR THE LAST 12 YEARS, OUR DOMESTIC FISHING INDUSTRY HAS BEEN OPPRESSED, BUT FOR THE LAST FOUR YEARS WE HAVE TRIED TO SURVIVE UNDER A CONSPIRACY TO TAKEOVER THE PUBLIC RESOURCES OF THE UNITED STATES AND RESERVE THEM FOR THE SPORTSFISHING COMMUNITY WITH THEIR LARGE BOATS THAT GO INTO **FEDERAL WATERS** TO PERSUE THEIR HOBBY.

COMMERCIAL FISHING INDUSTRY IN THE UNITED STATES HAS ALWAYS BEEN THE CREATION OF WEALTH; THE RECREATIONAL SECTOR JUST REDISTRIBUTES WEALTH CREATED SOMEPLACE ELSE. BECAUSE RECREATIONAL INTERESTS MAKE THEIR MONEY FROM OTHER AREAS, (OTHER THAN THE HARVEST OF RESOURCE), THEY HAVE MORE MONEY TO BUY EQUITY AND JUSTICE FOR THEIR ELITE GROUP; THEIR TARGET HAS BECOME THE COMMERCIAL FISHERMEN WHO SUPPLY FOOD TO THE AVERAGE AMERICAN CITIZEN. COMMERCIAL INDUSTRY CAN NO LONGER BE THE SCAPEGOAT.

THE **DO YOU CARE COALITION FOR COMMERCIAL FISHERMEN** WAS FOUNDED BECAUSE WE FOUND **NOBODY TO CARE**; WE SINCERELY HOPE THAT CHANGES NOW



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I WOULD ALSO LIKE TO POINT OUT THEN WHEN YOU CLOSE ANY RESOURCE TO COMMERCIAL HARVEST OF ANY KIND THERE IS NO WAY THAT TRUE SCIENTIFIC DATA CAN BE COMPILED, WE TRULY DO NOT KNOW WHAT THE VIRTUAL REALITY REGARDING THE STOCK IS; INSTEAD WE PLAY WITH PAPER FISH AND RUBBER DUCKS AND ASSUME THAT THIS IS REALITY; I ASSURE YOU IT IS NOT.

I WOULD LIKE TO MAKE SOME SPECIFIC RECOMMENDATIONS IN THE REVISION OF THE MAGNUSON ACT TO HELP PROTECT ALL RESOURCES FOR ALL USER GROUPS:

A. MAKE SURE THAT ALL THE REGIONAL COUNCILS ARE **EQUALLY BALANCED** BETWEEN COMMERCIAL AND RECREATIONAL REPRESENTATIVES WITH **NO "OTHER" CATEGORY.**

B. MAKE SURE THAT WHAT IS ALREADY REQUIRED BY MAGNUSON BE ADHERED TO, IN REGARDS TO SOCIAL AND ECONOMIC IMPACTS WITH REGULATIONS PASSED; THEY **MUST BE CONSIDERED EQUALLY.**

C. THAT THE BUDGET FOR NATIONAL MARINE FISHERY SERVICE NOT BE USED FOR ARTIFICIAL INTELLIGENCE THAT NEVER GETS CORRECTED, BUT RATHER FOR INDEPENDENT ASSESSMENTS WITH IMPERICAL INFORMATION BECOMING THE VIRTUAL REALITY.

D. WE NEED REGIONAL POWER GIVEN TO REGIONAL DIRECTORS OF NATIONAL MARINE

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FISHERY SERVICE WITHOUT HIDDEN  
AGENDA'S BY THE ASSISTANT ADMINISTRATOR  
WITH A BALANCED INPUT FROM ALL  
USER GROUPS AS WELL AS THE IMPERICAL  
AND ARTIFICAL DATA.

E. THE STATE DIRECTORS HAVE TOO  
MUCH POWER OF THE COUNCILS AND  
THEY SHOULD SIT ON THE COUNCILS  
AS ADVISORS WITH NO VOTE.

F. IMPLEMENT A NINTH REGIONAL  
COUNCIL FOR THE STATE OF FLORIDA  
ALONE TO BE SELF CONTAINED AND  
NOT INFLUENCE THE SOUTH ATLANTIC  
NOR THE GULF COUNCIL.

G. THE AA FOR NMFS SHOULD NOT  
BE SOMEONE FROM WITHIN THE AGENCY;  
IT SHOULD BE AN INDEPENDENT WITH  
UNDERSTANDING OF NATURAL RESOURCES  
IN OUR AMERICAN WATERS AND THE  
USER GROUPS OF THESE RESOURCES.

H. THAT PUBLIC COMMENTS AT PUBLIC  
HEARING BE GIVEN SOME CREDENCE WHEN  
ESTABLISHING REGULATIONS INSTEAD OF  
A SYSTEM THAT JUST TRIED TO LOOK LIKE

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THEY ARE FILLING A REQUIREMENT OF THE MAGNUSON ACT WHEN IN FACT THEY HAVE ALREADY MADE DECISIONS. DO NOT WASTE MONEY, TIME, OR EFFORT. VALUABLE INFORMATION CAN BE OBTAINED IF PEOPLE KNOW THAT YOU CARE ABOUT WHAT THEY HAVE TO SAY.

I. COUNCIL MEETINGS SHOULD BE HELD IN AREAS OF CONCERN, AND HARVEST, OF THE RESOURCE THAT IS BEING DISCUSSED. IF THERE IS PUBLIC COMMENTS TAKEN ON A RESOURCE THE TURN OUT CAN BE SMALL BECAUSE THE INDUSTRY MAY NOT BE ABLE TO AFFORD TO GO TO WHERE THE MEETING IS BEING HELD.

I WOULD LIKE TO THANK ALL OF YOU FOR READING THIS. I THANK YOU FOR THE OPPORTUNITY TO PUT SOME OF OUR CONCERNS FORWARD.  
WE HOPE YOU CARE.



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